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Subsection (d) requires the Comptroller General to submit a comprehensive report to Congress on the effect of contracting out public transportation operations and administrative functions on cost, availability and level of service, efficiency, and quality of service. This report shall be submitted to Congress one year after enactment.

Subsection (e) requires the Secretary to publish guidance in the Federal Register one year after enactment that describes for federal transit recipients the best way to document compliance with requirements regarding private enterprise participation in public transportation planning and transportation improvement programs.

*Sec. 2016. Project management oversight.*

This section amends 49 U.S.C. §5327(c)(1) by adding 2 new paragraphs to the end. New project management oversight (PMO) set-asides are established: 1 percent PMO set-aside for the fixed guideway modernization program under 49 U.S.C. §5337, which is consistent with the current law set-aside for this program under 49 U.S.C. §5309; and a 0.75 percent PMO set-aside for the CAMP program under 49 U.S.C. §5317.

*Sec. 2017. State safety oversight.*

This section amends 49 U.S.C. §5330(b). It allows the Secretary to require that up to 100 percent of the amount made available in a state or urbanized area under 49 U.S.C. §5307 be utilized on capital safety improvement and state of good repair projects on the state or urbanized area's fixed guideway transit systems before any other transit capital project is undertaken if the state has not met certain requirements. The requirements are that there be a state safety oversight agency (SSOA) that has been certified by the Secretary as meeting standards of adequate technical capacity, personnel resources, and authority under relevant state laws to successfully perform safety oversight for rail transit systems in the state.

*Sec. 2018. Apportionment of appropriations for formula grants.*

Subsection (a) amends 49 U.S.C. §5336(i) to modify the apportionment amounts of urbanized area formula grant funds. The set-aside for small transit intensive cities (transit systems that exceed the national average in service factors such as ridership and vehicle revenue miles) is increased to a 2 percent set-aside. An additional 1 percent of the urbanized area formula grants program funding is set aside for apportionment to SSOA's in states that have rail transit systems not otherwise under the oversight of the FRA (e.g. light rail and subway systems, but not commuter rail systems).

Subsection (b) adds a new subsection (k) to the end 49 U.S.C. §5336, authorizing the state safety oversight formula. Under this authorization, federal funds will be directly apportioned to SSOA's on the basis of a formula to be established by the Secretary that takes into account service factors such as vehicle revenue miles, route miles, and passenger miles. Funds may be used by SSOA's for operational and administrative expenses, including employee training, to assist the SSOA in carrying out its safety oversight responsibilities. The Secretary is

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required to certify whether each SSOA has met the standards of adequate technical capacity, personnel resources, and authority under relevant state laws to successfully perform safety oversight for rail transit systems in its state. If certification is denied, the Secretary can require that up to 100 percent of the amount made available for use in a state or urbanized area under 49 U.S.C. §5307 be utilized on capital safety improvement and state of good repair projects on the state's rail transit systems before any other transit capital project is undertaken. An annual report from the Secretary is required, including amounts of funds apportioned under this authorization and the certification status of each SSOA, including what steps an agency that has been denied certification must take to be so certified.

*Sec. 2019. Fixed guideway modernization formula grants.*

This section amends 49 U.S.C. §5337 by inserting two new subsections to establish the general authority and program goals of the fixed guideway modernization program. A new subsection 5337(i) is added to end of the section that establishes procedures to be followed if recipients undertake a fixed guideway modernization project in advance, consistent with current law.

*Sec. 2020. Authorizations.*

This section amends FTA program authorizations under 49 U.S.C. §5338. In subsection (a), apportionments for formula and bus programs are authorized. For each of fiscal years 2013 through 2016, \$8,400,000,000 is available from the Alternative Transportation Account to carry out metropolitan and state transportation planning (49 U.S.C. §5305), urbanized area formula grants (49 U.S.C. §5307), bus and bus facilities formula grants (49 U.S.C. §5310), rural area formula grants (49 U.S.C. §5311), coordinated access and mobility program formula grants (49 U.S.C. §5317), bus testing (49 U.S.C. §5318) state safety oversight (49 U.S.C. §5330), national transit database activities (49 U.S.C. §5335), and fixed guideway modernization formula grants (49 U.S.C. §5337).

Subsection (b) authorizes \$1,955,000,000 annually for capital investment grants (new start and small start projects) under 49 U.S.C. §5309(m)(2) for fiscal years 2013 through 2016, to be appropriated from the General Fund of the Treasury.

Subsection (c) authorizes \$45,000,000 annually for research, training and outreach, and technical assistance projects under 49 U.S.C. §5312 and §5322 for fiscal years 2013 through 2016, to be appropriated from the General Fund of the Treasury.

Subsection (d) authorizes \$98,000,000 annually for FTA administrative expenses under 49 U.S.C. §5326 and §5334 for fiscal years 2013 through 2016, to be appropriated from the General Fund of the Treasury.

Subsection (e) states that activities under this chapter that are financed with amounts made available from the Alternative Transportation Account of the Highway Trust Fund are contractual obligations of the Government, commonly referred to as contract authority. Activities under this chapter financed with amounts appropriated from the General Fund of the

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Treasury are contractual obligations of the Government only to the extent that amounts are appropriated for such purpose in the annual appropriations process.

*Sec. 2021. Obligation limits.*

This section sets a total annual obligation limitation for amounts made available from the Alternative Transportation Account and amounts from the General Fund of the Treasury not to exceed \$10,498,000,000 for each of fiscal years 2013 through 2016. Not more than \$8,400,000,000 shall be from the Alternative Transportation Account.

*Sec. 2022. Program elimination and consolidation.*

This section repeals and amends current-law FTA programs. Repeals or amendments made by this section do not affect funds made available before the effective date of the repeal. The following programs are repealed or amended:

- 49 U.S.C. §5308, Clean Fuels Discretionary Grant Program, is repealed.
- 49 U.S.C. §5327(c) and 49 U.S.C. §31138(e)(4) are amended to conform citations within the subsection.
- 49 U.S.C. §5311(c)(1), Public Transportation on Indian Reservations, is repealed.
- 49 U.S.C. §5313, Transit Cooperative Research Program, is repealed.
- 49 U.S.C. §5314, National Research Programs, is repealed.
- 49 U.S.C. §5315, National Transit Institute, is repealed.
- 49 U.S.C. §3519, Bicycle Facilities, is amended by striking the last sentence.
- 49 U.S.C. §5316, Job Access and Reverse Commute Formula Grants, is repealed.
- 49 U.S.C. §5320, Paul S. Sarbanes Transit in the Parks Program, is repealed.
- 49 U.S.C. §5323(e)(4), Debt Service Reserve Pilot Program, is repealed.
- 49 U.S.C. §5328, Project Review, is amended by striking subsection (c), Program of Interrelated Projects.
- 49 U.S.C. §5339, Alternatives Analysis, is repealed.
- 49 U.S.C. §5340, Apportionments based on growing states and high density states formula factors, is repealed.
- Section 3009 of SAFETEA-LU is amended by striking subsection (i), Contracted Paratransit Pilot program.
- Section 3012(b) of SAFETEA-LU, Elderly Individuals and Individuals with Disabilities Pilot Program, is repealed.
- Section 3045 of SAFETEA-LU, National Fuel Cell Bus Technology Development Program, is repealed.
- Section 3046 of SAFETEA-LU, Allocations for National Research and Technology Programs, is repealed.
- Section 3038 of TEA-21, Over-the-Road Bus Accessibility Program, is repealed.

*Sec. 2023. Evaluation and report.*

This section requires the Comptroller General to evaluate the progress and effectiveness of FTA's assistance to grant recipients in complying with the prohibition under 49 U.S.C. §5332(b) against discrimination on the basis of race, color, creed, national origin, sex or age under any project, program or activity receiving federal transit funds. The report shall describe FTA's ability to address discrimination and foster equal opportunities in federally-funded transit projects and programs, and recommend improvements if necessary.

*Sec. 2024. Transit Buy America provisions.*

This section amends 49 U.S.C. §5323(j) by adding two new paragraphs to the Buy America requirements for federally-funded transit projects. Paragraph (10) applies the Buy America requirements to all contracts for a project that are within the scope of the project's NEPA determination, regardless of whether all elements of the project within such scope involve federal transit funds. Paragraph (11) sets additional requirements for FTA waivers of transit Buy America requirements, including full notice and comment opportunity and a detailed justification for any waiver that addresses the public comments received. Such justification shall be published before the waiver takes effect.

### TITLE III – ENVIRONMENTAL STREAMLINING

The American Energy and Infrastructure Jobs Act of 2012 streamlines the environmental review process in order to speed up project delivery and greatly reduce the time it takes to complete infrastructure projects. The Act refines and expands upon previous streamlining efforts to help deliver infrastructure projects and programs more quickly with better outcomes:

*Sec. 3001. Amendments to title 23, United States Code.*

This section provides that all repeals or amendments to sections or provisions in title III of the bill shall be to title 23, United States Code.

*Sec. 3002. Declaration of policy.*

This section amends 23 U.S.C. §101(b) to make it clear that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process.

*Sec. 3003. Exemption in emergencies.*

This section exempts the reconstruction of a road, highway, or bridge damaged by a declared emergency or disaster from a NEPA and other specified environmental review, approval, licensing, and permit requirements if the reconstruction is in the same location with the same specifications as the facility had before it was damaged.

*Sec. 3004. Advance acquisition of real property interests.*

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This section amends 23 U.S.C. §108 to permit states to acquire real property interests for a project using their own funds and at their own risk before the completion of NEPA without jeopardizing subsequent approval of the project. The acquisition is eligible for federal reimbursement once the project is approved. In addition, this section adds a new subsection (d) to allow states to acquire real property interests for a project using federal funds once a NEPA review is complete for the acquisition. This section also adds a new subsection (e) that encourages corridor preservation to reduce project costs, project delay, and impacts on the community.

*Sec. 3005. Standards.*

This section amends 23 U.S.C. §109 to allow detailed design prior to NEPA completion at the state's expense for traditional design-bid-build projects. The design work is eligible for federal reimbursement once the project is approved.

*Sec. 3006. Letting of contracts.*

This section amends 23 U.S.C. §112 to allow detailed design prior to NEPA completion at the state's expense for design-build projects. The design work is eligible for federal reimbursement once the project is approved. This section also authorizes the use of the construction manager/general contractor method of contracting in the federal-aid highway program.

*Sec. 3007. Elimination of duplication in historic preservation requirements.*

This section amends 23 U.S.C. §138 and 49 U.S.C. §303 to allow approvals and clearances for historic property secured by a transportation project sponsor under section 106 of the National Historic Preservation Act to meet the historic preservation requirements in section 4(f) of the U.S. Department of Transportation Act of 1966.

*Sec. 3008. Funding threshold.*

This section amends 23 U.S.C. §139(b) to set the minimum threshold for federal funding to trigger environmental reviews under NEPA. Federal funding triggers federal environmental reviews only where there is a substantial level of federal involvement. The de minimis threshold is defined in two ways: (1) as a total amount (more than \$10,000,000) and (2) as a percentage of total project costs (16% or more).

*Sec. 3009. Efficient environmental reviews for project decision making.*

This section further amends 23 U.S.C. §139 to eliminate duplication by providing a single system to review decisions and reduce bureaucratic delay by setting deadlines for the completion of environmental reviews. Section 139, added in SAFETEA-LU, established a new "environmental review process" for all projects for which an environmental impact statement (EIS) is prepared by the USDOT. This process remains vulnerable to delay. This section

amends section 139 to further streamline the environmental review process. More specifically, this section amends the following subsections of section 139:

Section 139(b) is amended to permit the Secretary, at the request of the state, to modify the review procedures under section 139 to encourage the use of programmatic approaches and strategies to meet environmental program and permit requirements.

Section 139(c) is amended to strengthen the role of lead agencies in the environmental review process. In cases where approval is required from multiple modal administrations within DOT, the Secretary shall designate a single modal administration as the lead federal agency.

Section 139(d) is amended to require each participating and cooperating agency to carry out its project review process concurrently, rather than consecutively, with the NEPA process.

Section 139(e) is amended to streamline the project initiation process by eliminating the requirement for the project sponsor to submit a project initiation notice.

Section 139(f) is amended to narrow the range of alternatives to be considered for a project. In addition, this section limits the comments of participating agencies to their area of authority and expertise. This section also prohibits an agency from reevaluating impacts that have been previously evaluated in prior environmental documents. This section promotes effective decision-making by requiring other federal agencies to accept the purpose and need and range of alternatives as determined by the lead agency if they do not object within a defined comment period.

Section 139(g) is amended to set deadlines for decisions of participating agencies under other environmental laws. If an agency does not meet a deadline, the project is deemed approved by that agency. Additionally, this section adds a new subsection (i) to streamline the process by condensing the final environmental impact statement and combining it with the record of decision.

The new section 139(j) prohibits an agency from requiring a supplemental environmental review once a record of decision or finding of no significant impact is made unless there are changes to the project, new information available or changes in circumstances that would result in new significant impacts that were not previously evaluated. In addition, the Secretary may only require a reevaluation of a document prepared under NEPA if there are substantial changes to the project that would result in new significant impacts that were not previously evaluated. Additionally, the Secretary may not require the record of decision to be changed solely because the project is no longer a priority for funding.

Subsection (m) requires the Secretary to implement this section and establish methodologies and procedures for evaluating impact of transportation projects subject to this section within 1-year of enactment of this Act.

Section 139(n) is amended to require the filing of a claim for judicial review within 90 days of a final action under NEPA.

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Finally, this section adds a new subsection (o) to place limitations on judicial review.

*Sec. 3010. Disposal of historic properties.*

This section amends 23 U.S.C. §156 to allow state transportation departments to sell surplus property that is not listed on the National Register of Historic Places without having to consider the sale an adverse impact. State transportation departments would still have to consider the adverse impact of properties that are listed on the Register; however, properties that are eligible but not actually on the Register would not require the analysis.

*Sec. 3011. Integration of planning and environmental review.*

This section adds a new section 167 to title 23, U.S.C. that promotes the integration of planning and the environmental review process by allowing environmental decisions made in the planning process to be carried forward into the NEPA process. In addition, this section promotes programmatic approaches by clarifying the authority for programmatic approaches and strategies rather than project-by-project reviews.

*Sec. 3012. Development of programmatic mitigation plans.*

This section adds a new section 168 to title 23, U.S.C. that improves process efficiency and funding flexibility for early or advanced mitigation and encourages mitigating impacts to natural resources at the program level.

*Sec. 3013. State assumption of responsibility for categorical exclusions.*

This section amends 23 U.S.C. §326 to allow the assignment of responsibility for all categorical exclusions to the states. Additionally, it allows the states to assume USDOT responsibilities without reducing the flexibility to use other project delivery methods, such as acquiring real property interests and performing design work prior to the completion of the NEPA process.

*sec. 3014. Surface transportation project delivery program.*

This section amends 23 U.S.C. §327 to make permanent the existing environmental delegation pilot program and allow all states the option to participate. Additionally, it allows the states to assume USDOT responsibilities without reducing the flexibility to use other project delivery methods, such as acquiring real property interests and performing design work prior to the completion of the NEPA process. It clarifies that a state can assume USDOT's responsibility for making conformity determinations under the Clean Air Act, along with all other environmental review responsibilities.

*Sec. 3015. Program for eliminating duplication of environmental reviews.*

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This section adds a new section 331 to title 23, U.S.C. that eliminates duplication of environmental reviews by allowing states to use state environmental requirements in the place of federal requirements as long as the state's environmental requirements meet or exceed federal requirements.

The Committee expects that this program will provide opportunities to expedite transportation project delivery by eliminating duplicative state and federal environmental review procedures. The Secretary will be responsible for determining whether the alternative environmental review and approval procedures of the state are substantially equivalent to applicable federal laws and regulations. Furthermore, it is the Committee's expectation that units of local government and local transportation agencies that are responsible for carrying out the environmental review process required by state law will be permitted to participate in this program.

*Sec. 3016. State performance of legal sufficiency reviews.*

This section adds a new section 332 to title 23, U.S.C. that allows a state to self-certify the legal sufficiency of a NEPA document for a federal-aid highway project. Additionally, this provision would allow FHWA in certain circumstances to conduct its own independent legal sufficiency review.

*Sec. 3017. Categorical exclusions.*

This section classifies projects in the right-of-way as categorical exclusions under NEPA.

*Sec. 3018. Environmental review process deadline.*

This section requires the completion of the environmental review process within 270 days after the project initiation notice is published.

*Sec. 3019. Relocation assistance.*

This section streamlines the relocation process by requiring the Secretary to establish an alternative relocation payment process to allow a lump-sum payment for acquisition and relocation where elected by the displaced occupant. The payment would be based upon just compensation for property acquired and estimated eligible relocation benefits calculated in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. In addition, this section amends the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to update assistance amounts based on inflation.

#### TITLE IV – TRANSPORTATION PLANNING

*Sec. 4001. Transportation planning.*



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Subsection (a) inserts a new Chapter 52—Transportation Planning—in title 49 of the United States Code. Chapter 52 consolidates the metropolitan and state planning provisions of titles 23 and 49 to provide a common transportation planning program to be administered by the FHWA and FTA. More specifically section 4001 adds the following sections to Chapter 52 of title 49:

## **CHAPTER 52 – TRANSPORTATION PLANNING**

### *Sec. 5201. Policy.*

This section combines the policy provisions of 23 U.S.C. §134 and 49 U.S.C. §5303. In addition, the section clarifies that the intent of this new chapter is to provide a common transportation planning program to be administered by FHWA and FTA.

### *Sec. 5202. Definitions.*

This section combines the definition provisions of 23 U.S.C. §134 and 49 U.S.C. §5303. This section defines regional transportation planning organization.

### *Sec. 5203. Metropolitan Transportation Planning.*

This section combines the existing language in 23 U.S.C. §134 and 49 U.S.C. §5303.

#### *“23 U.S.C. §5203(a). General Requirements.*

This subsection ensures that when the plans and transportation improvement programs of a metropolitan area provide for the development and integrated management and operation of transportation systems and facilities, those facilities include intermodal facilities that support intercity transportation, and intercity bus and intercity bus facilities.

#### *“23 U.S.C. §5203(b). Designation of metropolitan planning organizations.*

This subsection changes the population threshold for the designation of a metropolitan planning organization from 50,000 to 100,000 individuals. This subsection also restores language to allow the designation of a metropolitan planning organization to be revoked by agreement among the Governor and units of general purpose local government which together represent at least 75 percent of the affected population or as otherwise provided under state or local procedures.

#### *“23 U.S.C. §5203(d). Coordination of multistate areas.*

This subsection repeals the Tahoe Regional Planning Process.

#### *“23 U.S.C. §5203(f). Scope of planning process.*

This subsection directs metropolitan planning organizations to consider projects and strategies that support the economic vitality of the metropolitan area, increase the safety and security of the transportation system, increase the accessibility and mobility of people and for freight, protect and enhance the environment, enhance the integration and connectivity of the transportation system, promote efficient system management and operation, emphasize preservation and support intermodal facilities and facilitate regional growth as part of the planning process. The Committee believes access to natural resources essential to the built environment is important to economic vitality and should be considered in the planning process. The failure of a metropolitan planning organization to consider the listed factors may not be reviewed by any court.

*"23 U.S.C. §5203(g). Development of long-range transportation plan.*

This subsection requires the metropolitan planning organization in formulating the long-range transportation plan to consider factors, including other relevant data and factors disseminated by the Secretary under the National Strategic Transportation Plan requirements in section 5205(b). It also directs the metropolitan planning organization to consider the role of intercity buses as part of developing a long-range transportation plan.

*"23 U.S.C. §5203(h). Metropolitan TIP.*

This subsection includes intermodal facilities that support intercity transportation as a part of the publication of annual listings of projects. In addition, this subsection allows a Governor to modify the transportation improvement program if the state and metropolitan planning organization cannot agree on an Interstate project of statewide significance. This subsection also directs the metropolitan planning organization to modify the long-range transportation plan to be consistent with the transportation improvement program.

*Sec. 5204. Statewide transportation planning.*

This section combines the language from 23 U.S.C. §135 and 49 U.S.C. §5304.

*"23 U.S.C. §5204(a). General requirements.*

This subsection ensures that when the plans and transportation improvement programs of a state provide for the development and integrated management and operation of transportation systems and facilities, those facilities include intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities.

*"23 U.S.C. §5204(e). Additional requirements.*

This subsection strengthens the requirement for states to partner with rural local officials or regional transportation planning organizations by requiring cooperation instead of only consideration of their concerns.

*"23 U.S.C. §5204(f). Statewide strategic long-range transportation plan.*

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This subsection lists the requirements for a statewide strategic long-range transportation plan, including requiring states to:

- consider data and factors disseminated by the Secretary under the National Strategic Transportation Plan requirements in section 5205(b),
- identify transportation projects that are of statewide, regional, and national importance and estimates of the costs of those projects,
- for states that have an airport with at least 1 percent of all delayed aircraft operations in the United States, include measures to alleviate congestion at that airport,
- for states with rail corridors that are at or exceed capacity, include measures to relieve congestion in its freight rail corridors,
- for states with deep draft ports, take into account projected expansion and increase in shipping traffic at those ports,
- for states with navigable inland waterways, include plans to facilitate transportation using navigable inland waterways,
- in developing plan, ensure interconnectivity between facilities and modes.

This subsection requires the statewide strategic long-range transportation plan to be developed in cooperation with affected local officials of nonmetropolitan areas with responsibility for transportation or, if applicable, through regional transportation planning organizations. This subsection directs the plan to consider the role intercity buses play in reducing congestion, pollution, and energy consumption in a cost-effective manner and the strategies and investments that preserve and enhance intercity bus systems, including systems that are privately owned and operated.

*"23 U.S.C. §5204(g). Statewide transportation improvement program.*

This subsection requires the state to develop the transportation improvement program in cooperation with local officials of nonmetropolitan areas with responsibility for transportation or, if applicable through regional transportation planning organizations.

*"23 U.S.C. §5204(k). Designation of regional transportation planning organizations.*

The bill adds subsection (k) authorizing a state to establish and designate regional transportation planning organizations in order to enhance the planning, coordination, and implementation of statewide strategic long-range transportation plans and programs. This subsection requires the structure of a regional transportation planning organization to be a multi-jurisdictional, voluntary organization of nonmetropolitan local officials. This subsection lays out the minimum requirements for a regional transportation planning organizations including, a policy committee and a fiscal and administrative agent. Additionally, this subsection lists the duties of a regional planning organization. For states that do not establish a regional transportation planning organization, the state is required to consult with local officials to determine projects that may be of regional significance.

*Sec. 5205. National strategic transportation plan.*

Section 5205 is added to ensure the Secretary, in consultation with state departments of transportation, develop a national strategic transportation plan.

*Sec. 5206. National performance management system.*

Section 5206 requires the Secretary to establish a national performance management system to track the nation's progress toward broad national performance goals for the nation's highway and transit systems. The Secretary is directed to establish core performance measures in collaboration with the states, metropolitan planning organizations, and public transportation agencies. States are directed to establish performance targets in their long-range transportation plan.

*Sec. 4002. Special rules for small metropolitan planning organizations.*

This section grandfathers in as a metropolitan planning organization those organizations in an urbanized area with a population between 50,000 and 100,000.

*Sec. 4003. Financial plans.*

This section directs the Secretary to revise the planning regulations relating to financial plan requirements.

*Sec. 4004. Plan update.*

This section requires states to update their statewide strategic long-range transportation plan to comply with the amended planning requirements.

*Sec. 4005. State planning and research funding for title 23.*

This section amends 23 U.S.C. §505 to include research activities related to intercity bus systems as an eligible expenditure under the state planning and research program.

*Sec. 4006. National academy of sciences study.*

This section directs the Secretary to enter into arrangements with the National Academy of Sciences to conduct a study on the implementation of the performance measurement process.

## TITLE V – HIGHWAY SAFETY

*Sec. 5001. Amendments to title 23, United States Code.*

All repeals or amendments to sections or provisions in this title shall be made to title 23, United States Code.

*Sec. 5002. Authorization of appropriations.*

This section authorizes appropriations out of the Highway Trust Fund for section 402, section 303 of title 49 and administrative and operating expenses for the National Highway Traffic Safety Administration (NHTSA) to carry out chapter 4 of title 23. Amounts made available for chapter 4 of title 23 can only be used to carry out the programs in chapter 4 and cannot be used for construction purposes, unless otherwise provided. Funds made available by this section shall be available for obligation and administered in the same manner as chapter 1 of title 23.

*Sec. 5003. Highway safety programs.*

Subsection (a) amends 23 U.S.C. §402(a). Subsection (a) requires each state to have a highway safety program. Guidelines are established for each state's highway safety program. The program requires each state to have an effective record system of traffic crash information and requires the state program be applicable to federally administered areas.

Subsection (b) amends 23 U.S.C. §402(b). Subsection (b) changes "national law enforcement mobilizations" to a broader term. New subparagraphs (F), (G) and (H) are added at the end of subsection (b)(1) to incorporate requirements for highway safety data and traffic records systems as part of each state's highway safety program. Subsection (b)(3) is removed.

Subsection (c) amends 23 U.S.C. §402(c). Subsection (c) changes the apportionment formula to reward states that have primary enforcement safety belt laws, ignition interlock laws, and graduated driver's licensing laws with more apportionment funds. Each state with a highway safety improvement program receives apportioned funds based on population and road mileage. Paragraph (3) establishes minimum apportionment criteria for states, the Secretary of the Interior and the U.S. territories. Paragraph (4) establishes approval criteria for each state's highway safety program for the Secretary. If a state has more than 0.5 alcohol impaired driving fatalities per 100,000,000 vehicle miles traveled for the most recent 3 year period, that state is required to spend a percentage of their apportionment on projects and activities addressing impaired driving. States are prohibited from using their apportioned funds under this section for any programs involving an automated traffic enforcement system. The definition of "automated traffic enforcement system" should include red light cameras, speed cameras, and automated license plate readers. This section is not intended to diminish or preclude enforcement of commercial motor vehicle regulations under title 23 or title 49.

Subsection (d) amends 23 U.S.C. §402(d), (e), (f), and (g) by inserting subsection headings in 402(d), (e), (f) and (g). Subsection (k) is repealed.

Subsection (e) adds a new subparagraph (m) that requires states to establish performance targets to be incorporated into each state's highway safety plan. The performance targets are based on the following set of performance measures: the annual number of traffic fatalities and serious injuries resulting from traffic crashes, the annual number of traffic fatalities and serious

injuries involving drivers with a blood alcohol content of .08 or above, the annual number of unrestrained motor vehicle occupant fatalities and the annual number of motorcyclist fatalities. A new subsection (n) is added that establishes the requirements that each state's highway safety plan must meet. If a state fails to meet their performance targets, they will be required to spend more of their apportionment on projects and activities that address a specific safety area. A new subsection (o) is added that requires the Secretary to submit a report to Congress that evaluates each state's performance with respect to the performance targets set by each state and any improvements the Secretary may recommend. A new subsection (p) provides definitions for terms used in this section. The definition of "graduated drivers licensing law" should not be construed to prevent states from having more restrictive graduated drivers licensing laws. If in the Secretary's judgment, a state is more restrictive than the provisions in the definition, than such state should qualify for funding under subsection (c)(2)(E). The definition of "ignition interlock law" should be interpreted to include any state that has enacted and is enforcing any law that mandates the installation of an ignition interlock device for drivers convicted of driving with a blood alcohol content of 0.08 or higher. If a state has a mandatory ignition interlock law for drivers convicted of driving with a high blood alcohol content, states with such a law shall qualify under this definition.

*Sec. 5004. Use of certain funds made available for administrative expenses.*

This section amends 23 U.S.C. §403 by authorizing the Secretary to conduct highway safety research and establish a high visibility enforcement program out of administrative expenses. A minimum amount of the allocation for administrative expenses shall be spent on activities under this section.

*Sec. 5005. Repeal of programs.*

This section repeals the following sections:

- 23 U.S.C. §405, the Occupant Protection Incentive Grants program
- 23 U.S.C. §406, Safety Belt Performance Grants program
- 23 U.S.C. §407, Innovative Project Grants program
- 23 U.S.C. §408, State Traffic Safety Information System Improvement program
- 23 U.S.C. §410, Alcohol-Impaired Driving Countermeasures
- 23 U.S.C. §411, State Highway Safety Data Improvements program
- Section 2009 of SAFETEA-LU, High Visibility Enforcement program
- Section 2010 of SAFETEA-LU, Motorcyclist Safety program
- Section 2011, Child Safety and Child Booster Seat Incentive Grants program
- Section 2013 of SAFETEA-LU, Drug-Impaired Driving Enforcement program
- Section 2014 of SAFETEA-LU, First Responder Vehicle Safety program
- Section 2016 of SAFETEA-LU, Rural State Emergency Medical Services Optimization Pilot program
- Section 2017 of SAFETEA-LU, Older Driver Safety; Law Enforcement Training program

*Sec. 5006. Discovery and admission as evidence of certain reports and surveys.*

This section incorporates 23 U.S.C. §402 into 23 U.S.C. §409.

*Sec. 5007. Prohibition on funds to check helmet usage or create checkpoints for a motorcycle driver or passenger.*

This section prohibits the Secretary from awarding grants or providing funding for any programs that check helmet usage or create checkpoints for motorcycle drivers.

*Sec. 5008. National driver register.*

This section requires the Secretary to establish and implement procedures to ensure timeliness and accuracy of data submitted by states to the National Driver Register. Also, requires the Secretary to submit a report to Congress on the timeliness and completeness of data submitted by states into the Nation Driver Register and an analysis of DOT's efforts to monitor compliance with reporting requirements.

## TITLE VI – COMMERCIAL MOTOR VEHICLE SAFETY

*Sec. 6001. Short title.*

This section provides that the short title for title VI of the legislation is the “Motor Carrier Safety, Efficiency, and Accountability Act of 2011”.

*Sec. 6002. Amendments to title 49, United States Code.*

This section provides that all repeals or amendments to sections or provisions in this title are to title 49, United States Code.

### SUBTITLE A – AUTHORIZATION OF APPROPRIATIONS

*Sec. 6101. Motor carrier safety grants.*

This section amends 49 U.S.C. §31104 to provide funding for motor carriers safety grants and to pay the administrative expenses of the Federal Motor Carrier Safety Administration (FMCSA).

Specifically, subsection (a) provides \$247,000,000 each year for fiscal years 2013 through 2016 from the Highway Trust Fund to provide grants to states under the Motor Carrier Safety Assistance Program (MCSAP) in section 31102.

Subsection (b) continues to allow the Secretary to deduct 1.25 percent or less of the MCSAP funds for administrative expenses to carry out the program. The section continues to

require the Secretary to use 75 percent of these funds for the training of non-federal employees with responsibilities under the program.

Subsection (c) codifies a state funding formula for distributing MCSAP funds. Currently the funding formula for MCSAP is in the federal motor carrier safety regulations. Codifying the funding formula will allow states to implement long-term strategies to improve commercial motor vehicle safety. The subsection sets a minimum and maximum allocation for states and allocates that each territory will receive \$350,000 annually.

Subsection (d) provides \$244,144,000 each year for fiscal years 2013 through 2016 from the Highway Trust Fund to pay the administrative expenses of the FMCSA. In addition, the subsection an outreach and education program administered by the FMCSA to educate commercial motor vehicle drivers and passenger vehicle drivers how they can operate safely and share the road with each other.

*Sec. 6102. Grant programs.*

This section provides \$30,000,000 each year for fiscal years 2013 through 2016 from the Highway Trust Fund to provide grants to states for the Commercial Driver's License Program Implementation under 49 U.S.C. §31313. In addition, this section provides \$30,000,000 each year for fiscal years 2013 through 2016 from the Highway Trust Fund to carry out the Commercial Vehicle Information Systems and Networks (CVISN) deployment program under section 4126 of SAFETEA-LU. The amounts made available under this section are to remain available until they are expended and are available for obligation either on their date of allocation, or on the first day of the fiscal year, whichever occurs first.

SUBTITLE B – REGISTRATION

*Sec. 6201. Registration requirements.*

This section amends 49 U.S.C. §13901 to require the Secretary to provide a distinctive registration number indicating the type of transportation or service to be provided (e.g.; motor carrier, freight forwarder, or broker). Subsection (b) adds a new section 13909 to chapter 139 that directs the Secretary to make information relating to registration and financial security publicly available on the internet.

*Sec. 6202. Motor carrier registration.*

Subsection (a) amends 49 U.S.C. §13902(a)(1) to add three new requirements for registration as a motor carrier. This section requires motor carriers to demonstrate knowledge through a proficiency exam, of safety, accessibility, and financial responsibility requirements prior to being granted the authority to operate in interstate commerce by the Secretary. In addition, a motor carrier must disclose to the Secretary any relationship between the applicant and another motor carrier and have a valid DOT number. This subsection requires a motor carrier to register separately as a broker in order to broker transportation services.



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Subsection (b) amends 49 U.S.C. §13902(a)(2) to add two new requirements for registration as a household goods motor carrier. In addition, each registrant must undergo a household goods audit. The registrant may submit a corrective action plan that addresses deficiencies if they fail the audit. This section provides that a registration is provisional until the audit is successfully completed and becomes permanent upon passage of the audit or a satisfactory corrective action plan.

*Sec. 6203. Registration of freight forwarders and brokers.*

Subsection (a) amends 49 U.S.C. §13903 to add to the registration requirements to be a freight forwarder. This subsection sets an experience and training requirement to be a freight forwarder. This subsection requires a freight forwarder to register separately in order to provide transportation as a motor carrier.

Subsection (b) amends 49 U.S.C. §13904 to add to the registration requirements to be a broker. This subsection sets an experience and training requirement to be a broker. This subsection requires a broker to register separately in order to provide transportation as a motor carrier. This subsection requires the Secretary to include the protection of motor carriers in regulations for brokers.

*Sec. 6204. Effective periods of registration.*

This section amends 49 U.S.C. §13905(c) to direct the Secretary to require the registration for freight forwarders and brokers to be renewed no later than 4 years after the date of enactment of this Act. In addition this section directs that the registration for freight forwarders and brokers will expire no later than 5 years after the date of renewal, but can be further renewed. This section requires motor carriers, freight forwarders, and brokers to update their registration information within 30 days of any change in essential information.

*Sec. 6205. Reincarnated carriers.*

This section amends 49 U.S.C. §13905(d) by adding the authority for the Secretary to deny, suspend, amend, or revoke any part of a motor carrier's registration for failure disclose in its application information related to its willingness and ability to comply with an applicable law or regulation or a condition of its registration. In addition this section amends 49 U.S.C. §31135 to prohibit two or more employers from using common ownership, common management, common control, or common familial relationship to avoid compliance with commercial motor vehicle safety regulations. The Secretary is directed to deny, suspend, amend, or revoke all or part of the employer's registration and determine civil penalty amounts. Additionally, this section amends 49 U.S.C. §31106(a)(3) to require the Secretary to develop information systems that can determine whether a motor carrier is or has been related to any other motor carrier through common ownership, management, or familial relationship.

*Sec. 6206. Financial security of brokers and freight forwarders.*

This section amends 49 U.S.C. §13906 to amend the financial security requirements for brokers and freight forwarders. This section requires financial security in the form and an amount to be adequate to ensure financial responsibility. This section sets the scope of financial responsibility for brokers and freight forwarders to be able to pay any claim arising from the failure to pay freight charges under a contract, agreement, or arrangement for transportation. This section requires a broker or freight forwarder to provide a minimum financial security of \$100,000, and directs the Secretary to evaluate that amount every five years. The Secretary is directed to suspend registration if the available financial security falls below the minimum amount. This section directs the Inspector General of DOT to review the Secretary's regulations and enforcement practices for financial security requirements.

*Sec. 6207. Registration fee system.*

This section amends 49 U.S.C. §13908(d)(1) to require registration fees to be as close as possible to covering the costs of processing the registration.

*Sec. 6208. Unlawful brokerage activities.*

This section amends chapter 149 by inserting a new section at the end, section 14916. Under this new section, an individual is authorized to provide interstate brokerage services only if they are registered and have satisfied the financial security requirements. Non-vessel-operating common carriers, ocean freight forwarders, customs brokers, and indirect air carriers are exempted from this requirement if they are arranging transportation as part of an international through movement. This section establishes a civil penalty for unauthorized brokering of transportation.

*Sec. 6209. Requirement for registration and USDOT number.*

This section amends subchapter III of chapter 311 by inserting a new section at the end, section 31134. This section authorizes a motor carrier, freight forwarder, or broker to operate commercial motor vehicles in interstate commerce if they have been registered by the Secretary and issued a USDOT number. This section requires the Secretary to register a motor carrier if the motor carrier is willing and able to comply with the requirements and has disclosed any relationship to another motor carrier. This section requires the Secretary to revoke or suspend a registration if authority to operate has been revoked or suspended under section 13905 or an employer has willfully failed to comply with requirements for registration. Nothing in this section affects the authority of a state to issue a USDOT number.

**SUBTITLE C – COMMERCIAL MOTOR VEHICLE SAFETY**

*Sec. 6301. Motor carrier safety assistance program.*

This section amends 49 U.S.C. §31102 to make changes to the Motor Carrier Safety Assistance Program (MCSAP).

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Subsection (a) directs the Secretary to administer MCSAP in order to assist states with the development and implementation of programs for improving motor carrier safety and the enforcement of federal regulations, standards, and orders on commercial motor vehicle safety and hazardous materials transportation safety. Currently states are required to submit a plan to the Secretary that acknowledges their agreement to assume responsibility for a variety of issues, including improving safety and adopting federal regulations, standards, and orders set by the Secretary. This section adds a requirement for states sharing a land border with Canada or Mexico to implement a border commercial motor vehicle safety program and enforcement activities. In addition, this section requires states to maintain their level of spending on these activities at a level that is at least equal to the average of the three years prior to enactment of this Act. This section directs the Secretary provide guidance and standards to aide in helping states reduce commercial motor vehicle crashes. This section directs states to establish performance targets for enforcement activities that will reduce fatalities and crashes and to update those targets annually. This section requires states to report to the Secretary the number and rate of fatalities and crashes involving commercial motor vehicles in the state.

This section directs the Secretary to annually review the plan and assess whether the state is meeting its targets. The Secretary is directed to either approve the plan or disapprove the plan. If the Secretary disapproves the plan, the Secretary is required to provide the state the reason for the disapproval. A state may resubmit a disapproved plan. If a state is not following its plan or the plan has become inadequate, the Secretary may withdraw approval of the plan and withhold grant funds.

A state is eligible for its MCSAP grant allocation if the state has an approved plan. If the state does not have an approved plan, it is eligible for its MCSAP grant allocation at a lower level depending on how long the state has not had an approved plan. Withheld funds will be reallocated among other states in the following fiscal year. States are required to use their grant funds to further the state's plan but may use 5 percent or less for enforcement activities on noncommercial motor vehicles.

*Sec. 6302. Performance and registration information systems management program.*

This section amends 49 U.S.C. §31109 to require the Secretary to carry out a performance and registration information systems management (PRISM) program that links federal motor carrier safety information systems with state registration and licensing systems. The program enables a state to determine the safety fitness of a motor carrier or registrant and deny, suspend, or revoke a registration and seize the registration plates if the motor carrier's operating authority has been revoked. This section requires state participation in the PRISM program and allows states to use commercial vehicle information systems and networks deployment grant funds to meet the PRISM participation requirements.

*Sec. 6303. Commercial vehicle information systems and networks deployment grants.*

This section amends commercial vehicle information systems and networks (CVISN) deployment grant program under section 4126 of SAFETEA-LU. This section allows CVISN grant funds to be used by states to participate in the performance and registration information

systems management program. This section eliminates the legislative caps on the amount a state can receive under the CVISN program.

*Sec. 6304. Commercial motor vehicle safety inspection programs.*

This section amends 49 U.S.C. §31142(b) to establish an annual vehicle inspection program for motorcoaches.

*Sec. 6305. Amendments to safety fitness determination.*

This section directs the Secretary to consider Safety Recommendation H-99-6 of the National Transportation Safety Board closed once the safety fitness determination methodology is revised.

*Sec. 6306. New entrant carriers.*

This section amends section 31144(g)(1) to direct the Secretary to prioritize new entrant safety review of motorcoach companies and hazardous materials carriers by conducting such reviews on an accelerated schedule. This section provides that a motor carrier's registration is not permanent until it passes a new entrant safety review.

*Sec. 6307. Improved oversight of motor carriers of passengers.*

This section amends 49 U.S.C. §3144 to require FMCSA to conduct safety fitness determinations of, and assign a safety rating to, each motorcoach company registered with the agency, and ensures regular monitoring of the safety performance of motorcoach companies.

*Sec. 6308. Driver medical qualifications.*

This section amends 49 U.S.C. §31149(c)(1)(D) to develop requirements applicable to medical examiners to be listed in the national registry. Subsection (b) amends section 31149(c)(1) to require additional oversight of licensing authorities. This section requires an annual review to assess the implementation of commercial driver's license requirements of at least 10 states to assess the accuracy, validity, and timeliness. The Secretary is directed to establish a national registry of medical examiners.

*Sec. 6309. Commercial motor vehicle safety standards.*

This section directs the Secretary to research the need for potential occupant protection standards for tuck tractors and motorcoaches.

*Sec. 6310. Crash avoidance technology.*

This section requires the Secretary to study and report to the Committee on Transportation and Infrastructure on the effectiveness of crash avoidance technologies to lessen the impact of distracted driving in commercial motor vehicle crashes.

*Sec. 6311. Expansion of collision mitigation study.*

This section requires the Secretary to expand an ongoing study and report to the Committee on Transportation and Infrastructure on collision mitigation systems in commercial motor vehicles. In order to thoroughly assess the potential of this safety technology, the Committee believes that the Secretary should work with multiple providers of commercial vehicle collision mitigation systems.

SUBTITLE D – COMMERCIAL MOTOR VEHICLE OPERATORS

*Sec. 6401. National clearinghouse for records relating to alcohol and controlled substances testing of commercial motor vehicle operators.*

This section amends chapter 313 by inserting adding a new section 31306a on a national clearinghouse for verified positive alcohol and controlled substance test results and test refusals as well as violations of FMCSA alcohol and controlled substances regulations of commercial motor vehicle operators. This section directs the Secretary to establish and maintain an information system that will serve as the clearinghouse. Employers are prohibited from allowing an individual to operate a commercial motor vehicle until the employer has queried the clearinghouse to ensure an individual is eligible under the testing program to operate a commercial motor vehicle. This section limits the release of clearinghouse information and requires compliance with all applicable federal privacy laws and regulations. This section authorizes the Secretary to collect fees from such employers and other authorized users for informational requests. This section provides for civil and criminal penalties for violations of this provision.

*Sec. 6402. Commercial motor vehicle operator training.*

This section requires the Secretary to issue final regulations establishing minimum training requirements for commercial motor vehicle operators. This section amends 49 U.S.C. §31308(1) to add the requirement that an individual present a certification of completion of training to receive a commercial driver's license.

*Sec. 6403. Commercial driver's license program.*

This section amends 49 U.S.C. §31309 to require state commercial driver's license information systems to be able to receive and submit driver conviction and disqualification information.

This section amends 49 U.S.C. §31311 to require a state commercial driver's license (CDL) program to check the drug and alcohol clearinghouse before renewing a CDL. This section requires each state to submit a comprehensive CDL program plan for approval by the Secretary.

This section amends 49 U.S.C. §31313 to make a state eligible for CDL grants if the state has an approved plan. In addition, this section requires states to maintain their level of spending on these activities at a level that is at least equal to the average of the three years prior to enactment of this Act. This section sets the state funding formula for distributing CDL grants and guarantees a state with an approved plan a minimum apportionment of one-half of one percent of the funds available.

*Sec. 6404. Commercial driver's license passenger endorsement requirements.*

This section requires the Secretary to review and assess the current knowledge and skill testing requirements for a CDL passenger endorsement to determine whether improvements are necessary. The Secretary is required to send a report on the findings to the Committee on Transportation and Infrastructure.

*Sec. 6405. Commercial driver's license hazardous materials endorsement exemption.*

This section would provide to Class A CDL holders a similar exemption from the hazardous materials endorsement requirement to the existing one given to restricted drivers license holders for hauling up to 1,000 gallons of diesel fuel.

*Sec. 6406. Program to assist veterans to acquire commercial driver's licenses.*

This section directs the Secretary to establish accelerated licensing procedures to help veterans get a CDL.

## SUBTITLE E – MOTOR CARRIER SAFETY

*Sec. 6501. Motor carrier transportation.*

This section provides that certain agricultural exemptions apply interstate.

*Sec. 6502. Requirements for hours of service.*

This section directs the Secretary to complete by March 31, 2013, a field study of the effectiveness of the 34-hour restart rule published on December 27, 2011, that applies to truck drivers. If the results of the study support the 34-hour restart rule, the Secretary is directed to move forward with implementation. If the results of the study do not support the rule, the Secretary is directed to modify the rule through a new rulemaking.

*Sec. 6503. Electronic logging devices.*

This section requires performance standards to be included if the Secretary issues regulations regarding electronic logging devices that track compliance with hours of service requirements for commercial motor vehicle drivers. If an electronic logging device is not certified to meet the standards, it is not acceptable as evidence of hours of service and record of duty status requirements. This section also includes additional considerations that include the

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reduction or elimination to retain supporting documentation associated with paper-based records of duty status if an electronic logging device supplants such documentation. The information contained on an electronic logging device may only be used for enforcement of motor carrier safety.

*Sec. 6504. Motor carrier safety advisory committee.*

This section amends section 4144(d) of SAFETEA-LU to authorize the motor carrier safety advisory committee through September 30, 2017.

*Sec. 6505. Transportation of agricultural commodities and farm supplies.*

This section amends section 229(a)(1) of the Motor Carrier Safety Improvement Act of 1999 to revise exemptions from federal maximum driving and on-duty time motor carrier regulations for drivers transporting agricultural commodities and farm supplies during planting and harvest periods. This section extends the exemptions to drivers transporting agricultural farm supplies: (1) from a wholesale or retail distribution point of the farm supplies to a farm or other location where such supplies are intended to be used within a 150 air-mile radius from the distribution point, or (2) from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point. In addition, the exemption covers drivers transporting agricultural commodities from the source to a location within a 150 air-mile radius from the source.

*Sec. 6506. Exemption relating to transportation of grapes during harvest periods.*

This section exempts from federal maximum driving and on-duty time motor carrier regulations any drivers transporting grapes in a state if the transportation is: (1) during a harvest period, and (2) limited to an area within a 175 air mile radius from the location where the grapes are picked or distributed.

SUBTITLE F – MISCELLANEOUS

*Sec. 6601. Exemptions from requirements for certain farm vehicles.*

This section exempts certain farm vehicles (including the individual operating the vehicle) from certain federal requirements (for a CDL, drug testing, medical certificates, and hours of service) governing the operation of motor vehicles. This section also prohibits federal transportation funding to a state from being terminated, limited, or otherwise interfered with as a result of the state's exempting a covered farm vehicle (including the individual operating that vehicle, but excluding any farm vehicle transporting hazardous materials requiring a placard) from any state requirements governing the operation of that vehicle.

*Sec. 6602. Technical correction.*

This section amends section 306(c)(2)(B) of the SAFETEA-LU Technical Corrections Act of 2008.

*Sec. 6603. Study of impact of regulations on small trucking companies.*

This section requires the Comptroller General to conduct a study to assess trends in motor carrier safety relating to small trucking companies and independent operators and requires the study to analyze the extent to which safety regulations adversely impact and economically and competitively disadvantage small trucking companies and independent operators.

*Sec. 6604. Report on small trucking companies.*

This section requires the Secretary to submit to Congress a report on the efforts of the DOT to better balance truck competition and efficiency with safety.

*Sec. 6605. Rulemaking on road visibility of agricultural equipment.*

This section requires the Secretary to issue a rule to improve the daytime and nighttime visibility of agricultural equipment that may be operated on a public road. The rule is required to establish minimum lighting and marking standards for new agricultural equipment manufactured after the effective date of the rule. This rule does not require the retrofitting of agricultural equipment.

*Sec. 6606. Transportation of horses.*

This section amends 49 U.S.C. §80502 to prohibit the transportation of horses in a multi-level trailer and authorizes a civil penalty of between \$100 and \$500 for each violation of this prohibition.

*Sec. 6607. Regulatory review and revision.*

This section requires the Secretary to review and revise the federal motor carrier safety regulations to simplify the regulations and eliminate requirements that are outmoded or excessively burdensome.

*Sec. 6608. Issuance of safety regulations.*

Directs the Secretary to expedite the issuance of safety regulations to carry out this title of the bill.

*Sec. 6609. Repeals.*

This section repeals the following programs and provisions:

- Section 31104, High-Priority Program, is repealed.
- Section 31107, Border Enforcement Grants, is repealed.
- Subsections (c), (d), and (e) of section 4123 of SAFETEA-LU, Commercial Driver's License Information System Modernization, are repealed.



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- Section 4127 of SAFETEA-LU, Outreach and Education, is repealed.
  - Section 4128 of SAFETEA-LU, Safety Data Improvement Program, is repealed.
  - Section 4134 of SAFETEA-LU, Grant Program for Commercial Motor Vehicle Operators, is repealed.
  - Section 4023 of TEA-21, the report on Motor Carrier Employee Protections, is repealed.

## TITLE VII – RESEARCH AND EDUCATION

### *Sec. 7001. Authorization of appropriations.*

This section authorizes appropriations out of the Alternative Transportation Account of the Highway Trust Fund for 23 U.S.C. §503, §503a, §504, §512, §514, §515, §516 and §517, and 49 U.S.C §5506 and §111 for fiscal years 2013 through 2016.

### *Sec. 7002. Obligation ceiling.*

All obligations made available from the Alternative Transportation Account for this title shall not exceed \$440,000,000 for each of fiscal years 2013 through 2016.

### *Sec. 7003. Definitions.*

This section amends 23 U.S.C. §501 by adding definitions for the terms ‘connected vehicle technology’, ‘incident’, ‘intelligent transportation infrastructure’, ‘intelligent transportation system’, and ‘national architecture’.

### *Sec. 7004. Surface transportation research, development and technology.*

This section amends 23 U.S.C. §502 by changing the section heading to “Surface Transportation Research, Development, and Technology”. Additional subparagraphs are added or amended to align federal responsibilities and the Secretary’s role in carrying out surface transportation research and education with the programs established in other section under Title V. New subparagraphs (C) and (D) are added to 23 U.S.C. §502(b)(6) to allow states to transfer their allocation under this chapter to other states in order to facilitate mutual research, development, and technology transfer activities.

A new section 502(b)(7) is added that allows the Secretary to initiate prize competitions to stimulate innovation in the area of surface transportation research that is consistent with the Secretary’s research and deployment objectives and activities in section 503.

Subsection (c) is amended by changing the federal cost share to 80 percent for collaborative research and development carried out by the Secretary.

The following programs are repealed from 23 U.S.C. §502:

- 23 U.S.C. §502(d), Contents of Research Program
- 23 U.S.C. §502(e), Exploratory Advanced Research
- 23 U.S.C. §502(f), Long-Term Pavement Performance Program
- 23 U.S.C. §502(g), Seismic Research
- 23 U.S.C. §502(h), Infrastructure Investment Needs Report
- 23 U.S.C. §502(i), Turner-Fairbank Highway Research Center
- 23 U.S.C. §502(j), Long-Term Bridge Performance Program

*Sec.7005. Research and development.*

This section amends 23 U.S.C. §503 by requiring the Secretary to carry out a research and development program that is consistent with the strategic plan established under 23 U.S.C. §508. The areas of surface transportation research and development identified are as follows: improving highway safety, improving highway infrastructure integrity, reducing congestion, improving highway operations, enhancing freight productivity, assessing policy and system financing alternatives, and exploratory advanced research. Each research and deployment area has specified objectives and activities relevant to each area.

Subsection (f)(3) requires the Secretary to carry out an Infrastructure Investment Needs Report. Subsection (g) authorizes the Secretary to make grants and enter into cooperative agreements with entities to pay the federal share of research, development and technology transfer under subsection (b). Subsection (h) requires the Secretary to operate the Turner-Fairbank Highway Research Center to support the Secretary's research agenda. Subsection (i) allows the Secretary to establish Centers for Surface Transportation Excellence.

*Sec.7006. Technology and innovation deployment program.*

This section adds a new 23 U.S.C. §503a which requires the Secretary to establish a technology and innovation deployment program by promoting and facilitating technologies, products, methods or tools resulting from highway research conducted under this chapter.

Subsection (b) outlines the objectives the Secretary shall seek to advance in carrying out the program. Subsection (c) describes the types of activities the Secretary may carry out under the program. Subsection (d) authorizes the Secretary to make grants and enter into cooperative agreements with entities to pay the federal share of research, development and technology transfer under this section. Subsection (e) requires the Secretary to incorporate research results and products developed under 23 U.S.C. §510, the Future Strategic Highway Research Program.

As part of the objectives described in subsection (b), the Secretary shall carry out deployment of innovative pavements, consistent with the research requirements described in section 503(d)(1)(F), with the potential for extended pavement life span and enhanced performance, and reduced initial costs and life cycle costs.

*Sec.7007. Training and education.*

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This section amends 23 U.S.C. §504 by clarifying the duties and courses developed by the National Highway Institute. The federal cost share for activities carried out by the local technical assistance centers established in section 504(b) is 50 percent and the federal cost share for tribal technical assistance centers will remain at 100 percent.

Section 504(c) is amended to clarify the eligible expenses for the Dwight David Eisenhower Transportation Fellowship Program.

Section 504(d), the Garrett A. Morgan Technology and Transportation Education Program is repealed.

Section 504(e) is amended by removing 23 U.S.C. §144 from eligible expenses and adding eligible activities under 23 U.S.C. §504(e).

The subsection heading for section 504(f) is amended.

*Sec. 7008. State planning and research.*

This section clarifies which programs are required to make planning and research activities available for expenditure.

*Sec. 7009. International highway transportation outreach program.*

This section repeals 23 U.S.C. §506, the International Highway Transportation Outreach Program.

*Sec. 7010. Surface transportation-environmental cooperative research program.*

This section repeals 23 U.S.C. §507, the Surface Transportation-Environmental Cooperative Research Program.

*Sec. 7011. Transportation research and development strategic planning.*

This section requires the Secretary, acting through the Administrator of the Research and Innovative Technology Administration, to develop a 5-year transportation research and development strategic plan no later than 1 year after the date of enactment of this Act. One of the primary purposes of the plan shall be improving goods movement.

*Sec. 7012. National cooperative freight transportation research program.*

This section repeals 23 U.S.C. §509, the National Cooperative Freight Transportation Research Program.

*Sec. 7013. Future strategic highway research program.*

This section repeals 23 U.S.C. §510, the Future Strategic Highway Research Program.

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*Sec. 7014. National intelligent transportation systems program plan.*

This section amends the 23 U.S.C. §512 heading. Section 512 is amended by requiring the Secretary to develop a 5-year National Intelligent Transportation Systems program plan not later than 1 year after the date of enactment of this Act.

*Sec. 7015. Use of funds for intelligent transportation systems activities.*

This section amends the 23 U.S.C. §513 heading. The funds made available under section 7004(a)(4) of this Act shall be subject to the requirements of section 513.

*Sec. 7016. Intelligent transportation systems program goals and purposes.*

This section creates a new 23 U.S.C. §514, Intelligent Transportation Systems Program Goals and Purposes, by moving the language found in section 5303 of SAFETEA-LU into the United States Code.

Section 5303 of SAFETEA-LU is repealed.

*Sec. 7017. Intelligent transportation systems program general authorities and requirements.*

This section creates a new 23 U.S.C. §515, Intelligent Transportation Systems Program General Authorities and Requirements, by moving the language found in section 5305 of SAFETEA-LU into the United States Code.

Section 5305 of SAFETEA-LU is repealed.

*Sec. 7018. Intelligent transportation systems research and development.*

This section creates a new 23 U.S.C. §516, Intelligent Transportation Systems Research and Development, by moving the language found in section 5306 of SAFETEA-LU into the United States Code.

Section 5306 of SAFETEA-LU is repealed.

*Sec. 7019. Intelligent transportation systems national architecture and standards.*

This section creates a new 23 U.S.C. §517, Intelligent Transportation Systems National Architecture and Standards, by moving the language found in section 5307 of SAFETEA-LU, except section 5307(a)(4), into the United States Code.

Section 5307 of SAFETEA-LU is repealed.

*Sec. 7020. National university transportation centers.*

This section repeals section 5505 of subtitle III of title 49, National University Transportation Centers.

*Sec. 7021. University Transportation Research.*

This section amends 49 U.S.C. §5506, University Transportation Research. The University Transportation Center program is changed by keeping the competitive structure of the Regional and Tier I centers. Tier I centers are changed to Standard centers and the Tier II centers are repealed. The Secretary is required to complete the competitive process for both Regional and Standards centers no later than 180 days after the date of enactment of this Act. Of the 10 Regional centers, the Secretary is required to establish one of the centers in the field of comprehensive transportation safety and one of the centers in the field of technology for integrated transportation systems operation and performance. The Secretary is required to post any funding opportunities on the DOT website. The Secretary is required to work with the National Academy of Sciences on the selection of University Transportation Centers. All selection process evaluation procedures shall be made transparent by the Secretary

*Sec. 7022. Bureau of transportation statistics.*

This section amends 49 U.S.C. §111 by changing what statistics the Bureau is required to collect. Subsection (d), the information needs assessment, of section 111 is replaced with a new subsection (d), access to federal data, which gives the Bureau greater authority to collect relevant transportation data from the agencies in DOT and other federal agencies, subject to statutory and regulatory restrictions. The reference to the Mass Transit Account in subsection (n) is amended to the Alternative Transportation Account. Subsection (o)(2)(B) is struck.

*Sec. 7023. Administrative authority.*

This section amends 49 U.S.C. §112 by adding a new subsection (f) which allows a percentage of funding for administrative expenses to be used by the Administrator of the Research and Innovative Technology Administration for evaluation and oversight of the programs administered by the Administration.

A new subsection (g) is added which gives the Administrator of the Research and Innovative Technology Administration the authority to collaborate with non-federal entities on research and development activities. Subsection (g) authorizes the Administrator to enter into grants, contracts and cooperative research and development agreements with non-federal entities on a cost shared basis. The use of technology under any grant, contract or cooperative agreement is subject to the Stevenson-Wydler Technology Innovation Act of 1980.

*Sec. 7024. Technical and conforming amendments.*

Subsection (a) repeals sections 5308, 5309, 5310, 5501, 5506, 5507, 5511, and 5513 of SAFETEA-LU.

Subsection (b) makes conforming changes to the table of contents in SAFETEA-LU.

Subsection (c) amends section 6010(c) of SAFETEA-LU by striking the reference to subtitle C of title V and inserting 23 U.S.C. §501.

## TITLE VIII – RAILROADS

### SUBTITLE A – INTERCITY PASSENGER RAIL CAPITAL PROGRAMS

#### *Sec. 8001. Capital grants for class II and class III railroads.*

This section repeals capital grants for class II and class III railroads grant program, authorized in the Energy Independence and Security Act of 2007 (P.L. 110-140) for \$50,000,000 annually, though grant funding was never appropriated.

#### *Sec. 8002. Congestion grants.*

This section repeals the congestion grants program, authorized in the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432) for \$100,000,000 in fiscal years 2012 and 2013.

#### *Sec. 8003. Intercity passenger rail capital grants to states.*

This section makes several edits and amendments to 49 U.S.C. §24402, including:

- eliminating §24402(b) as duplicative;
- amending §22402(c)(1)(D) to require competition for operating contracts for passenger rail service on projects funded under this program authorization;
- eliminating §22402(c)(2)(B)(vi)-(v) as burdensome;
- deleting §22402(g)(3)-(4); and
- amending §22402(h) to require any unobligated amount be used to pay down the federal deficit.

### SUBTITLE B – AMTRAK

#### *Sec. 8101. Authorization for Amtrak operating expenses.*

This section reduces Amtrak operating subsidies for FYs 2012-2013 by twenty-five percent. This reduction aligns Amtrak's authorization for operating expenses with the appropriated level of funding for operating expenses since FY 2010.

#### *Sec. 8102. Limitations on Amtrak authority.*

This section amends 49 U.S.C. §24305 to add subsection (g) that prohibits Amtrak from using federal funds to hire outside counsel to sue another passenger rail service provider or to pursue a lawsuit against a passenger rail service provider arising from a competitive bid process.

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This section does not prohibit Amtrak from using its own funds for these purposes, including hiring outside counsel to sue another passenger rail service provider.

Amtrak competes with other private passenger rail operators for commuter rail operating contracts. In the competitive bidding process, sometimes Amtrak wins the operating rights, and sometimes their private sector competitors win. Open competition for rail operations saves regional transportation authorities' taxpayer dollars, while improving the services provided. When the San Joaquin Regional Rail Commission bid out its start-up Altamont Commuter Express, Herzog won the contract with a bid of \$5.37 million and that was 48% lower than Amtrak's \$10.32 million bid. Similarly, Keolis began operating Virginia Railway Express in 2010 after winning a 5-year operating contract with a bid that was \$1 million less than Amtrak's.

Furthermore, when South Florida Regional Transportation Authority bid out operations of its Tri-Rail South Florida service, Veolia Transportation beat Amtrak's bid to operate by over \$60 million. Amtrak did not file a bid protest challenging the bid process, but instead filed an employment-related suit in Federal District Court. Veolia, however, has been forced to defend a lawsuit for over four years and has spent \$2 million dollars on legal fees. Veolia estimates these costs will double once the case is through the appeals process and completed. While a private company must absorb legal costs related to litigation, Amtrak currently may fund its litigation expenses with its federal funding. By restricting Amtrak's use of federal funds for these purposes, this provision effectuates the intent of Amtrak's organic statute, 49 U.S.C. §24301(a)(2), that Amtrak "shall be operated and managed as a for-profit corporation." The intent of this provision is to ensure that Amtrak not use federal funds to chill competition for the provision of passenger rail service.

#### *Sec. 8103. Applicability of laws.*

Section 8013(a) applies certain provisions of Title 18 to Amtrak and the Amtrak Office of the Inspector General (Amtrak IG) to ensure that the federal funding Amtrak receives is protected from fraud, waste, and abuse.

Section 8013(b) clarifies that claims and statements made to Amtrak are considered as claims and statements under the False Claims Act to ensure Amtrak IG has the necessary tools to protect the government and taxpayer dollars from fraud.

Section 8013(c) applies these sections to Amtrak only in those years in which Amtrak receives a federal subsidy.

#### *Sec. 8104. Inspector General of Amtrak.*

A new provision, 49 U.S.C. § 24317, is added to ensure federal funds are protected and spent wisely. New subsection 24317(a) grants Amtrak IG the authority to investigate fraud, waste, and abuse. New subsection 24317(b) ensures that Amtrak IG, which is fully funded by federal appropriations, may take advantage of the General Services Administration's programs designed to conserve federal resources, reduce expenses, and increase efficient operations. New

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subsection 24317(c) extends qualified immunity to Amtrak IG personnel to ensure performance of their statutory duties is not hindered by the threat of litigation and liability.

*Sec. 8105. Amtrak management and accountability.*

This section revises 49 U.S.C. §24310 to properly reflect the roles of the DOT IG and the Amtrak IG with respect to reporting on the implementation of PRIIA by DOT and Amtrak, respectively.

*Sec. 8106. Amtrak food and beverage service.*

This section revises 49 U.S.C. §24305 to add a new subsection that requires the FRA to competitively bid out food and beverage service on Amtrak trains. Amtrak's IG reported that in fiscal year 2010, Amtrak lost \$61 million in direct costs on its food and beverage service, and the U.S. Government Accountability Office (GAO) has previously noted that Amtrak spends about \$2 to earn \$1 in food and beverage revenue.

*Sec. 8107. Application of Buy America to Amtrak.*

This section adds new paragraphs 49 U.S.C. §24305(f)(5)-(6) that apply Buy America provisions to Amtrak for all contracts carried out with federal funds and requires public notice of and justification for any waivers requested for Buy America.

## SUBTITLE C – PROJECT DEVELOPMENT AND REVIEW

*Sec. 8301. Project development and review.*

This section adds new chapter 229 to title 49 that will streamline the environmental review process for rail projects.

*“49 U.S.C. §22901. Applicability.*

This section applies the chapter to all freight and passenger rail capital projects that are planned to be carried out with FRA funds either through a loan, grant, contract, or other financing. This section also requires the chapter be broadly construed to ensure all ambiguity is resolved in favor of applying the chapter.

*“49 U.S.C. §22902. Definitions.*

This section defines terms for the chapter.

*“49 U.S.C. §22903. Efficient environmental reviews for rail project decision making.*

This section closely follows 23 USC § 139 and is generally intended to speed up the environmental review process for rail projects.



Subsection (a) applies to all EIS for projects and any other environmental review if determined appropriate by Secretary. The subsection also allows the authorities granted under the section to be used on a project, class of projects, or program of projects and allows procedures to be modified for programmatic compliance. It also excludes certain actions from review if they fall below a funding threshold to tie the environmental review process to the level of federal interest in the project.

Subsection (b) establishes the role of the DOT as lead agency and sets out the roles of other federal and non-federal agencies and entities, including project sponsors, in the environmental review process to help streamline coordination of the process. Paragraph (b)(5) requires federal agencies to use the environmental documents created under this review process to eliminate duplicative environmental reviews.

Subsection (c) requires that the lead agency invite all federal and non-federal agencies with an interest in the project to become participating agencies. A federal agency invited to be a participating agency must accept, unless it declines in writing stating it has no jurisdiction or authority. Also allows participating agencies to be deemed cooperating agencies and requires that participating and cooperating agencies carry-out their reviews concurrently.

Subsection (d) requires the project sponsor to notify the lead agency of the type of work, length, and location of the project, and any expected approvals needed, which is intended to help lead agencies in inviting other agencies to participate.

Subsection (e) requires the lead agency to involve the public as early as possible in defining purpose and need and requires the purpose and need to clearly state the project objectives. Similarly, paragraph (e)(4) requires early determination with public involvement of the range of alternatives. The range of alternatives is restricted under (e)(4)(B)(ii) to not allow reevaluation of any alternative evaluated but not adopted in a federal or state environmental document for the rail or transportation plan or in a programmatic or tiered environmental document. Clause (e)(4)(B)(iii) deems that alternatives evaluation legally sufficient.

Subparagraph (e)(4)(C) requires the lead agency to decide on the methodologies for evaluating the alternatives with input from participating agencies as part of the scoping process. These changes will eliminate delay later in the review process through early identification of these matters with public input.

Subparagraph (e)(4)(D) allows a preferred alternative to be developed to higher level of detail, which speeds the decision-making process by focusing resources on which alternative is preferred.

Subparagraph (e)(4)(E) limits re-evaluation of cumulative impacts and growth-inducing impacts if previously studied in prior planning or environmental document. These evaluations are deemed legally sufficient.

Paragraph (e)(5) allows the lead agency to deem that participating agencies concur with the decisions of the lead agency under the subsection, unless the participating agency submits written objections within a specified timeframe.

Paragraph (f)(1) allows for early coordination and scheduling between agencies to ensure the process has a time certain for completion. Paragraph (f)(2) also establishes comment deadlines on the draft EIS and other documents to create certainty for the completion of the environmental review process. Paragraph (f)(3) requires participating agencies to make decisions under other laws they administer within a specified timeframe to ensure one agency does not hold up the review process. Failure to make a decision in that timeframe deems the project approved by that agency, but does not subject the agency to judicial review.

Subsection (g) ensures the environmental process moves smoothly by establishing an issue identification and resolution process early on in the review for matters identified by participating agencies that might delay or prevent approval of the project. Resolutions under the process are not to be re-evaluated and are deemed compliant with applicable laws.

Subsection (h) streamlines the decision-making process by requiring a condensed final EIS and record of decision to eliminate lapse in time between the issuance of the two documents, where the preferred alternative has not changed from the draft EIS and the Secretary determines the parties involved will implement the measures applicable to the approval.

Subsection (i) restricts when supplemental environmental reviews and reevaluations may occur to when changes in the project will result in significant impacts or there is a change in circumstances or new information and more than 5 years has lapsed since approval, which will ensure that once a project is studied it need not be subjected to further environmental review.

Subsection (j) requires the Secretary to establish a program to measure and report on progress of improving and expediting the planning and environmental review process.

Subsection (k) allows states to request that parts of its funds may be used to aid federal, state, or tribal agencies in expediting and improving planning and delivery for rail projects.

Subsection (l) requires the Secretary to issue regulations to implement the section and establish methodologies and procedures to evaluate environmental impacts. If the environmental review follows these procedures it is deemed compliant with applicable law.

Subsection (m) establishes a 90-day statute of limitations on claims arising from the environmental review process. Paragraph (m)(2) clarifies that a supplemental EIS is considered a separate action and establishes a similar 90-day review period. Doing so creates greater certainty for projects to move forward without the specter of judicial review and delay.

Subsection (n) establishes venue for relief where the project is located and limits those that may seek relief to individuals with a specific property interest and that have identified their claims in the draft EIS comment period.

*"49 U.S.C. §22904. Integration of planning and environmental review.*

This section is intended to reduce duplicative study and analysis, by allowing the use of decisions from planning documents to be brought up into the environmental review process at the scoping stage.

Subsection (a) allows the lead agency to adopt planning products into the environmental review at the scoping stage.

Subsection (b) identifies the types of planning decisions allowed to be adopted, including purpose and needs or goals and objectives statement; decisions regarding project location; decisions regarding alternatives for study or elimination; description of the environmental settings; decision on methodologies for analysis; and decisions on programmatic mitigation. It also allows for certain analyses to be used from planning documents, such as freight and passenger rail needs, development and growth, population and employment, environmental conditions, land use, potential environmental effects, and mitigation needs.

Subsection (c) identifies the conditions for use of a planning document, including that the plan was developed per federal law, the planning process contained broad consideration of needs and effects, the planning process gave notice to the public and agencies, documents related to the planning were made available to the public and agencies pre-scoping, no new information or circumstance has arisen to effect the product, based on reliable data and good methodologies, it is sufficiently documented, and the product is appropriate for use in an environmental review.

Subsection (d) clarifies that if the document is adopted it will not be subject to reconsideration or additional consultation unless the lead agency determines there is new information or circumstances warranting. It also allows other agencies to rely on the planning product in their reviews.

Subsection (e) clarifies that the section is not to be construed to make environmental laws are applicable to the development of planning products.

*"49 U.S.C. §22905. Eliminating duplicative environmental reviews.*

This section establishes a program to allow state environmental laws to be used for projects in lieu of federal environmental laws.

Subsection (b) allows state to participate through application. The application must give an explanation of the alternative environmental review of the state, how those laws are substantially equivalent to federal law, and evidence of having sought public comments on the application.

Subsection (c) requires the Secretary to review and decide on the application within 90 days and give the state written reasons for the decision.

Subsections (d) require the Secretary to approve the application if the laws are found to be substantially equivalent to federal laws.

Once approved, subsection (e) states that compliance with state permits are deemed to be compliant with federal laws, thereby reducing the separate state and federal environmental review processes.

Subsection (g) requires an annual report to Congress describing the administration of the program.

*"49 U.S.C. §22906. Railroad corridor preservation.*

This section allows entities to acquire rights of way and adjacent property prior to completion of environmental review. This section does not allow development of the property until final approval of the project and the environmental reviews are complete.

*"49 U.S.C. §22907. Treatment of railroads for historic preservation.*

This section precludes entire railroads or portions thereof from being designated as historic sites, but allows an exception for depots and bridges, or other significant structures as determined by the Secretary. Because most rail lines are over 50 years old, they can become eligible for historic review, even if they do not have any specific historical feature other than age. The intent of this section is to treat railroads similar to the way the interstate highway system is treated under 23 U.S.C. § 103 for historic preservation purposes, and allow the Secretary to develop a list of individual railroad elements that deserve historic preservation treatment.

The Committee on Transportation and Infrastructure held a hearing on this issue in June 2008. Though a report was required in section 407 of the Passenger Rail Investment and Improvement Act of 2008, the report is over two years past due. This section is intended to resolve continued concerns expressed by states such as Alaska and North Carolina where historic preservation reviews have held up projects that would improve bridge safety or enhance mobility. For example, the Alaska Railroad Corporation (ARRC) proposed extending a siding 2000 feet and because the State Historic Preservation Office (SHPO) required additional historic evaluation, costs increased more than \$25,000 and the project was delayed 4 months. Likewise, even unsafe, mundane bridges can be subjected to historic review simply because of age. In the case of ARRC's bridge 432.1, the state wanted to replace its failing foundation for safety reasons. Though the bridge was not unique, the historic preservation review delayed the project over a year and increased the costs. Similarly, in North Carolina, a historic review of the Southeast High-Speed Rail Corridor to determine eligibility of the corridor for the National Register of Historic Places increased the project costs by approximately \$150,000 and added 6 months to the project schedule. This section is intended to address these concerns while protecting historic elements of railroads.

*"49 U.S.C. §22908. Categorical exclusions.*

Subsection (a) requires that certain types of projects be categorically excluded from extensive NEPA review, including maintenance and replacement of tracks, bridges, structures, stations, communications, etc.; rail line additions in a right-of-way; projects related to positive train control; and replacement, reconstruction, and rehabilitation of existing bridges, as long as it does not require acquisition of significant new right-of-way.

Subsection (b) allows the Secretary to categorically exclude a project if the project would fit within a categorical exclusion but for an additional action, if the additional action is properly studied.

Subsection (c) authorizes the FRA to use of other administrations' categorical exclusions to the extent they may be applicable to the project before FRA.

*"49 U.S.C. §22909. State assumption of responsibility for categorical exclusion.*

This section is similar to 23 U.S.C. §326 and allows the Secretary to delegate to the states, at the Secretary's discretion, the authority to determine if certain activities are within classes of action that are categorically excluded from environmental reviews.

Subsection (b) allows the Secretary to also assign to the state, the Secretary's role under other laws that it would otherwise have to undertake for categorical exclusions. If the state assumes such role, it is solely responsible and liable for the carrying out that law.

Paragraphs (c)(1) and (c)(2) require the state and Secretary, after notice and comment, to enter into a 3-year, renewable, memorandum of understanding to carry out the section.

Paragraph (c)(3) requires that the state accept federal court jurisdiction for enforcement of its responsibilities.

Paragraph (c)(4) requires the Secretary to monitor the state's compliance, including financial ability of the state to carry out the program.

Subsection (d) allows the Secretary to terminate the memorandum of understanding if the state is not carrying out its responsibilities.

Subsection (e) clarifies that the state agency is deemed a federal agency for the purposes of the federal laws being carried out.

*"49 U.S.C. §22910. Rail project delivery program.*

This section is similar to 23 U.S.C. §327. In subsection (a) it allows the Secretary to develop a program to delegate to the states, upon the Secretary's approval, the authority to conduct the environmental review required for a project, class of projects, or program of projects or any authority under other federal environmental laws to the same extent required of the Secretary.

Subsection (b) requires regulations to establish the program and application requirements, including that applications contain the project or class of projects for which the state plans to exercise the authority, verification the state has the financial resources, and evidence on the state obtaining notice and comment on its applications.

Paragraph (b)(3) requires each state to give notice and public comment of its intent to apply for the program.

Paragraph (b)(4) requires approval of an application if the regulatory requirements are met, the state has the capability to assume the responsibility, and the head of the state agency enters an agreement with the Secretary.

Paragraph (b)(5) allows the Secretary to solicit comments of certain other federal agencies if applicable.

Subsection (c) outlines the requirements of the written agreement between the state and Secretary including, it be for a 5-year, renewable term, the state agrees to federal court jurisdiction, the state agrees to assume all or part of the responsibilities, the state has sufficient public notice laws, and will maintain sufficient financial responsibility.

Subsection (d) establishes legal jurisdiction for review in federal courts and applies the same legal standards and requirements to the state as would be applied to the Secretary.

Subsection (e) clarifies that the state is solely liable and responsible for carrying out responsibilities assumed.

Subsection (f) ensures the Secretary may not assign a state rulemaking authority.

Subsections (g)-(h) require the Secretary to audit and monitor compliance by the state.

Subsection (i) requires annual report to Congress on the program.

Subsection (j) allows the Secretary to terminate a state's participation after notice to the state and an opportunity to take corrective action.

*"49 U.S.C. §22911. Exemption in emergencies.*

This section exempts from environmental reviews the reconstruction of a railroad, track, bridge, or other facility damaged in an emergency if that reconstruction project meets certain requirements.

## SUBTITLE D – RAILROAD REHABILITATION AND IMPROVEMENT FINANCING

### *Sec. 8301. Railroad Rehabilitation and Improvement Financing.*

Subsection (a) of this section sets forth the purpose of the section which is to encourage more participation in the Railroad Rehabilitation and Improvement Financing (RRIF) program. It also requires the Secretary to issue regulations to carry-out the amendments made by the section.

Subsection (b) amends §502(b)(1)(C) of the Railroad Revitalization and Regulatory Reform Act of 1976 to make high-speed rail facilities eligible for RRIF loans.

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Subsection (c) amends §502(f)(1) to allow private insurance, including bond insurance, to cover loan costs.

Subsection (d) amends §502(f)(3) to allow the credit risk premium to be financed over the term of the loan.

Subsection (e) ensures the full value of the asset offered as collateral is credited and allows the Secretary to subordinate his/her rights under other provisions of to the rights of the Secretary under this section and section 503.

Subsection (f) is amended to ensure that the time limit for approval of the loan includes any review required by the Office of Management and Budget.

Subsection (g) adds a new paragraph to §502(i) requiring the Secretary to establish procedures to establish a 45-day time limit on determining whether a new RRIF loan application is complete, and that the procedures include what constitutes a complete application, provide for an independent financial analyst, a description of what is incomplete or unsatisfactory, and permit reapplication without prejudice.

Subsection (i) provides that RRIF loans for positive train control systems (PTC) are automatically in the public interest and requires the Secretary to accept the entire cost of the PTC system as collateral.

Subsection (j) adds a new §502(k) requiring an annual report to Congress summarizing RRIF loan activity over the past year, the report shall include the number of pre-application meetings, number of applications received and determined complete, dates of receipt, dates applications deemed complete, number of applications deemed incomplete, final decisions on approval/disapproval, number of applications withdrawn, and annual loan portfolio asset quality.

## SUBTITLE E – POSITIVE TRAIN CONTROL

### *Sec. 8401. Positive train control.*

This section amends the mandate enacted in the Rail Safety Improvement Act of 2008 (P.L. 110-432) requiring passenger and class I freight railroads to implement PTC collision avoidance systems on track over which intercity and commuter passengers travel, or over which poison or toxic-by-inhalation hazardous materials are transported. Subsection (a) amends 49 U.S.C. §20156 to clarify that, except as required by section 20157, nothing in this section shall be construed as requiring the installation of PTC on railroad tracks if PTC is not required on those tracks by section 20157 and PTC on those tracks is not chosen by the railroad as a technology to be implemented under this section.

Paragraph (b)(1) changes the PTC implementation date in 49 U.S.C. §20157 to December 31, 2020, clarifies that 2020 shall be the baseline year, and eliminates the Secretary's authority to require PTC on track not identified in statute. The FRA has noted a cost-benefit ratio of 22:1 in its final rule implementing PTC, with 20 year costs estimated at \$13.21 billion. There are

significant technological issues associated with PTC that require additional time for consideration. PTC is a communications intensive technology that requires continuous availability of radio frequency spectrum throughout the operating environment to support the data being transferred. Supporting this immense transfer of data communications requires a large amount of radio spectrum. Spectrum is also necessary to achieve interoperable communications between commuter and freight railroads which often operate on the same tracks. Many commuter rail agencies have encountered significant difficulty acquiring the spectrum over which these radios must operate.

Additionally, PTC technologies are largely untested in the commuter rail environment. In comparison to freight and intercity rail operations, the commuter rail environment poses unique challenges given the high traffic volumes, close headways, and reliability demands that have a low tolerance for service delays. To ensure successful and cost effective operations, PTC systems must be carefully integrated to allow for these high volumes of service and must be calibrated to meet the needs of the precise operating environment of a commuter railroad. Until proper testing in the commuter rail environment is conducted, there can be no definitive resolution as to whether or not PTC will increase travel time or result in service disruptions. Extensive development, testing, and validation are necessary to ensure operations success.

A December 2010 report by the GAO entitled "Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandating Safety Technology" found that while all railroads impacted by PTC requirements have been putting forth good faith efforts to meet the mandate, there is a strong potential for delays if certain problematic components of the process are not rectified in a timely manner. The GAO further noted that "demonstrating a high level of maturity before allowing new technologies into product development programs increases the chance for successful implementation and that, conversely, technologies that were included in a product development program before they were mature later contributed to cost increases and schedule delays."

Paragraph (b)(2) allows railroad carriers, in lieu of installing positive train control, to utilize an alternative risk reduction strategy on lines carrying poison- or toxic-by-inhalation hazardous materials, but not on lines carrying passenger trains. Providing the opportunity to pursue alternative risk reduction strategies offers a technology neutral approach that allows for flexibility to reduce the risk of poison- or toxic-by-inhalation hazardous materials to the same extent these risks would be reduced using PTC. This approach is consistent with Obama's Executive Order 15563 (January 18, 2011), Improving Regulation and Regulatory Review.

Paragraph (b)(3) allows a railroad carrier to revise an implementation plan as necessary to reflect rail lines that are added or removed, or to reflect the use of alternative risk reduction strategies.

Paragraph (b)(4) pushes back the date for the Secretary's report to Congress on the progress of PTC implementation, requires the report include recommendations for improving PTC implementation or alternative risk reduction strategies.

#### SUBTITLE F – REGULATORY REFORM



*Sec. 8501. Federal Railroad Administration regulations.*

Subsection (a) amends section 103 of title 49, U.S.C. by adding a new paragraph, 49 U.S.C. §103(l), which provides that before any final regulation is issued, the Administrator shall consider the governing legal authority; the nature and significance of the problem; whether existing rules have created or contributed to the problem and changes to those rules; the best reasonably obtainable scientific, technical, and other information; the potential costs and benefits; means to increase the cost-effectiveness; incentives for innovation, consistency, predictability, lower costs of enforcement and compliance (to government entities, regulated entities, and the public), and flexibility; and any reasonable alternatives. The paragraph also requires the Administrator to solicit and take into consideration public comment on these subjects and to follow applicable rulemaking procedures. Subsection (b) ensures this change is only effective with respect to regulations where no notice of proposed rulemaking has been issued. This section supports the objectives of President Obama's Executive Order 15563 (January 18, 2011): Improving Regulation and Regulatory Review.

SUBTITLE G – TECHNICAL CORRECTIONS

*Sec. 8601. Miscellaneous corrections, revisions, and repeals.*

Subsection (a) makes technical corrections to provisions of the United States Code enacted in, or amended by, the Rail Safety Improvement Act of 2008, including minor corrections for technical reasons to clarify the meaning of the provisions, such as substitution defined statutory terms for undefined terms; to replace colloquial language with more formal language; to correct an error of spelling; capitalization, punctuation, or diction; or to eliminate an ambiguity or internal inconsistency.

Subsection (b) makes technical corrections to the Rail Safety Improvement Act of 2008, including minor corrections for technical reasons to clarify the meaning of the provisions, such as substitution defined statutory terms for undefined terms; to replace colloquial language with more formal language; to correct an error of spelling; capitalization, punctuation, or diction; or to eliminate an ambiguity or internal inconsistency.

Subsection (c) makes technical corrections to provisions of the United States Code enacted in, or amended by, the Passenger Rail Investment and Improvement Act of 2008 (PRIIA).

Subsection (c) makes technical improvements to the section 214 Alternate Passenger Rail Service Pilot to allow for a 5-year, renewable operations period and to allow the Secretary to provide directly to a winning bidder any portion of appropriations for Amtrak necessary to cover the operating subsidy described in subsection (a)(5)(B).

Subsection (c) also amends certain grant selection criteria to require competition and removes certain competitive grant selection criteria placing unnecessary requirements on rail carriers and granting the Secretary overly broad discretion.

Subsection (d) amends section 209(c) of PRIIA requiring implementation of the new cost-allocation methodology for state-supported Amtrak routes, to align the cost-allocation methodology implementation with state budget processes.

#### SUBTITLE H – MISCELLANEOUS

##### *Sec. 8701. Application of Buy America to intercity passenger rail service corridors.*

This section adds new paragraphs 49 U.S.C. §24405(a)(11)-(15) that apply Buy America provisions to all contracts carried out with federal funds and requires public notice of any waivers requested for Buy America.

##### *Sec. 8702. Prohibition on use of funds for California high-speed rail.*

This section prohibits any funds in the Act from being used for high-speed rail projects in California.

##### *Sec. 8703. Disadvantaged business enterprises.*

Subsection (a) requires that at least 10 percent of capital grant program funds under FRA's jurisdiction be expended through small businesses owned by socially and economically disadvantaged individuals.

Subsection (b) defines terms for the section.

Subsection (c) allows disadvantaged businesses to still be eligible to receive funds if the disadvantaged business enterprises (DBE) program is deemed unconstitutional and is consistent with the savings clause currently in the federal highways and federal transit DBE programs.

Subsection (d) requires the program be implemented in accord with the federal highways and federal transit DBE programs.

#### TITLE IX – HAZARDOUS MATERIALS TRANSPORTATION

##### *Sec. 9001. Short title and table of contents.*

This section provides the short title and table of contents for title IX of the bill.

##### *Sec. 9002. Amendment of title 49, United States Code.*

This section provides that all repeals or amendments to sections or provisions in title IX of the bill shall be to title 49, United States Code.

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*Sec. 9003. Findings.*

This section makes certain findings regarding the transportation of hazardous materials.

*Sec. 9004. Purposes.*

This section amends section 49 U.S.C. § 5101 to remove language that negatively implies the transportation of hazardous materials is dangerous.

*Sec. 9005. Definitions.*

The definition of a "hazmat employer" in section 49 U.S.C. § 5102(4) is amended to delete the term "uses." This change is not intended to eliminate any employee training requirements, but simply clarifies who is responsible for the training. This section does not change the fact that each hazmat employee, even if self-employed, has a hazmat employer responsible for training that employee. This section would still require a hazmat employer to train a hazmat employee employed on "a full time, part time, or temporary basis" (49 U.S.C. § 5102(4)(A)(i)(I)).

Section 49 U.S.C. § 5102(13) is amended to revise the definition of "transports" and "transportation" to more clearly identify loading, unloading, handling, and storage as within the jurisdiction of the Pipeline and Hazardous Materials Safety Administration's (PHMSA) regulatory authority and is intended to be consistent with current PHMSA authority. This language covers the full range of transportation from the loading of the material at its origin to the unloading of the material at its destination.

*Sec. 9006. General regulatory authority.*

Section 49 U.S.C. § 5103(b)(1)(A) is amended to add a new clause (vii) that clarifies that PHMSA's regulations apply to those persons providing hazmat emergency response information services.

A new subparagraph, 49 U.S.C. § 5103(b)(1)(C), is added to require that procedures and criteria for fitness determinations in applications for approvals and special permits must be developed through notice and comment rulemaking.

A new paragraph, 49 U.S.C. § 5103(b)(3), is added which provides that before any final regulation is issued, the Administrator shall consider the governing legal authority; the nature and significance of the problem; whether existing rules have created or contributed to the problem and changes to those rules; the best reasonably obtainable scientific, technical, and other information; the potential costs and benefits; means to increase the cost-effectiveness; incentives for innovation, consistency, predictability, lower costs of enforcement and compliance (to government entities, regulated entities, and the public), and flexibility; and any reasonable alternatives. The paragraph also requires the Administrator to solicit and take into consideration public comment on these subjects and to follow applicable rulemaking procedures. The new

paragraph is only effective with respect to regulations where no notice of proposed rulemaking has been issued.

A new paragraph, 49 U.S.C. § 5103(b)(6), is added to ensure that certain standards developed by private entities, who charge individuals for copies of those standards, will not be incorporated into the regulations without consideration of the costs of the publication, broadness of its application, and alternatives to incorporation of the standards. The Secretary would be required to use the standards or the alternative that meets safety objectives in the most cost-effective manner.

*Sec. 9007. Inspections of motor vehicles transporting radioactive material.*

This section amends 49 U.S.C. § 5105(d) to create uniformity among states regarding inspections of interstate movements of certain radioactive materials such that commerce is not disrupted at each state line. These changes would only allow states to conduct a new inspection of the materials at the highest level, as those inspection levels are defined by the Commercial Vehicle Safety Alliance, where an en route change has occurred. This section is intended to preserve the states' ability to conduct lower level inspections.

*Sec. 9008. Hazmat employee training requirements and grants.*

Section 49 U.S.C. § 5107 is amended to eliminate a narrowly defined designation of an eligible recipient of grant funds for hazmat employee training grants. The intent of this section is to eliminate duplicative training, as hazmat employers are already required to train hazmat employees.

Section 49 U.S.C. § 5107(f) is amended to remove the Occupational Safety and Health Administration's (OSHA) overlapping jurisdiction regarding regulation of the handling of hazardous materials. This section is intended to cover handling hazardous materials when such handling is incidental to the movement of the hazardous materials. Nothing in this section leaves the handling hazardous materials in transportation unregulated, as either PHMSA or OSHA regulations will still be applicable. Instead, it clarifies that when PHMSA regulates the handling of hazardous materials incidental to transportation, OSHA regulations on that specific issue would be preempted, as they are in most other circumstances where another agency's regulations affect the occupational safety and health of workers. (See 29 U.S.C. § 653(b)(1).) This provision is not intended to supplant OSHA rules governing emergency response or safety rules related to non-transportation activities.

*Sec. 9009. Fees.*

Section 49 U.S.C. § 5108 is amended to eliminate minimum registration fees and is intended to allow for greater flexibility of the Secretary in determining fee levels.

A new subparagraph (D) is added to ensure that (1) no new fee authority is allowed for special permit and/or approval applications, and (2) to keep the Secretary from charging higher registration fees to special permit or approval holders/applicants as a substitute for application

fee authority. The intent of this section is to eliminate the imposition of any increased fees on industry.

*Sec. 9010. Motor carrier safety permits.*

Section 49 U.S.C. § 5109 is amended to reflect appropriate DOT nomenclature for explosives in paragraph (b)(1) and "offerors" in subsection (f).

Section 9010 requires a review and report for the motor carrier permit program that would resolve a concern that permits are denied because the safety standard changes from cycle-to-cycle. Currently, this cyclical change creates uncertainty for businesses as the standard can vary based on the performance of other motor carriers. The report requires identification of stakeholder concerns, information regarding permit issuance and denial, and the Secretary's description of actions to address the concerns. This section also requires a report to Congress on the program. Finally, the section requires the Secretary to issue regulations to resolve any programmatic concerns and ensure consistent standards.

*Sec. 9011. Planning and training grants, monitoring, and review.*

This section makes amendments to 49 U.S.C. § 5116 to increase the flexibility of how the Secretary allocates grant money for states between planning and training grants. These changes require recipients to certify that their fees are fair and properly reported and that the Secretary report on both planning and training grants.

This section also amends 49 U.S.C. § 5116(j) to make the supplemental training grants program more generally applicable. It also allows for the grants to be used for portable training at national consensus standard levels.

*Sec. 9012. Special permits and exclusions.*

Section 49 U.S.C. § 5117 is amended to ensure that the procedures and criteria for applying for special permits are established through notice and comment rulemaking. The intent of providing procedures and criteria through notice and comment rulemaking is to allow the regulated industry and the public the opportunity to comment on those procedures and criteria. Currently, those procedures and criteria are published in standard operating procedures that were not developed through notice and comment rulemaking.

This section also requires that special permits be incorporated into the regulations once they are proven to be safe. Under this section, a special permit will be given the opportunity to be incorporated into the regulations if it has been in place for more than six years and meets certain standards, including that it concerns a matter of general applicability, has future effect, and is consistent with safety. This section also recognizes that a number of special permits currently in effect meet these criteria and should be given the opportunity to be incorporated into the regulations. This amended section allows the Secretary three years to incorporate all outstanding special permits that are six years or older and meet the standards set forth in the subsection.

This section also does not allow a special permit application for modification, renewal, or party status to be denied solely because an applicant's hazmat out of service percentage is greater than the national average. This section does not prohibit denial for other reasons in addition to the hazmat out of service percentage being greater than the national average.

*Sec. 9013. Hazardous material uniform motor carrier permit program.*

Section 49 U.S.C. § 5119 is amended to resolve the lack of uniformity among the states in hazardous material permitting programs. These revisions make the uniform program mandatory for the states by only allowing the states to enforce registration and permitting that conforms to this uniform program. The section is intended to leave in place the right of states to charge fees for registration and permitting.

*Sec. 9014. International uniformity of standards and requirements.*

This section amends 49 U.S.C. § 5120 to ensure that PHMSA is the agency representing the nation on international forums regarding the transportation of hazardous materials in international commerce. Since 1967, PHMSA has been the lead agency in such international work, but recently was replaced in these forums by other modal administrations whose responsibilities are not solely transportation of hazardous materials.

*Sec. 9015. Investigations.*

This section amends 49 U.S.C. § 5121 to ensure that Secretary's authority to open and inspect packages applies only to undeclared packages, that the inspection occur in an appropriate facility, and that notice be given to the offeror and carrier of such inspection.

This section also requires a rulemaking on the authority to open and inspect packages that will help avoid delay in transporting time-sensitive materials, ensure proper training and equipment for inspectors, ensure proper restoration of the package for resumed transportation, and take into consideration the cost and damages that the inspection may cause.

*Sec. 9016. Building partnerships for improved safety and system performance.*

This section added a new paragraph, 49 U.S.C. § 5121(g)(4), to allow the Secretary to make grants and cooperative agreements to provide consistent training on enforcement among the states. Coupled with changes to 49 U.S.C. § 5125 on uniform enforcement standards, this change will help ensure enforcement is conducted state-to-state in a uniform manner.

*Sec. 9017. Safety reporting.*

This section amends 49 U.S.C. § 5121(h) to require that the biennial report on transportation of hazardous materials include all modes set forth by type and quantity, a basis for all special permits issued, the activities of undeclared package inspections and emergency orders.

*Sec. 9018. Civil penalties.*

This section deletes the minimum penalties for violations in 49 U.S.C. § 5123(a) to give the Secretary more discretion and flexibility for situations where a violation is minor. This section does not, however, preclude the Secretary from imposing a fine equal to what is the current minimum if the Secretary deems it necessary in a particular circumstance.

A new paragraph, 49 U.S.C. § 5123(a)(4), is added to ensure a carrier at a road/trackside inspection is not cited for violations over which the carrier had no control. Carriers are often cited for violations of regulations for which the carrier is not responsible, so the intent of this section is to limit citations of carriers for pre-transportation functions performed by another person.

This section also adds new subsection 49 U.S.C. § 5123 (h) which enhances safety by imposing penalties for failing to maintain records, reports, and information.

*Sec. 9019. Preemption.*

A new paragraph, 49 U.S.C. § 5125(a)(3), is added to allow the Secretary to make the determination that a particular local law creates an unreasonable burden on commerce. This provision would allow the DOT to preempt state and local laws that are deemed an unreasonable burden on commerce. Currently, that analysis is left to the courts. This change would allow the entity with expertise in transporting hazardous materials in commerce to determine, in the first instance, whether a particular state or local law unreasonably burdens commerce.

This section strikes "written" from 49 U.S.C. § 5125(b)(1)(D) to remedy the problem of each state or jurisdiction within a state having different verbal notification requirements for unintentional release of a hazardous material. This section is intended to create uniformity in verbal notification requirements and does not prohibit the Secretary from amending verbal notification requirements under the regulations.

This section also amends 49 U.S.C. § 5125(c)(1) to require all hazmat routes either be registered on the DOT'S route registry or deemed unenforceable by the states. This section is intended to ensure that carriers may use this route registry to determine the routes that they may travel.

This section requires the reporting on fee usage in 49 U.S.C. § 5125(f)(2) be on a biennial basis rather than at the Secretary's discretion to enhance transparency.

Section 9019 also requires uniform enforcement standards, such as standards for procedure, penalty, and mental state, among the states.

*Sec. 9020. Authorization of appropriations.*

This section amends 49 U.S.C. § 5128 to authorize appropriations of funds for PHMSA's hazardous materials programs \$39,000,000 annually for fiscal years 2012 through 2016.

Authorizations for activities under the Hazardous Materials Emergency Preparedness Fund, which is funded by annual hazardous materials registration fees, total \$23,763,000 million annually for fiscal years 2012 through 2016.

This section also amends 49 U.S.C. § 5128(b) to make the hazardous materials emergency preparedness grant program more flexible by granting the Secretary the discretion to allocate funds between training and planning. This section also makes a conforming amendment to delete the funding for the grants eliminated under section 9008.

A new subsection, 49 U.S.C. § 5128(e), is added to authorize the appropriation of \$1,000,000 for the implementation by states of the uniform forms and procedures under 49 U.S.C. § 5119. This one-time authorization of funds remains available for a six-year period beginning on the date of enactment.

*Sec. 9021. Electronic shipping papers pilot program.*

This section establishes a pilot program to determine whether electronic shipping papers would be cost effective for the motor carrier industry, and requires at least one pilot program to be in a rural area.

*Sec. 9022. Wetlines study.*

This section requires a study on cargo tank truck external product piping, or "wetlines", to identify whether regulation is cost efficient, while prohibiting final rules on the matter.

*Sec. 9023. Product study.*

This section requires a study on whether certain common household products containing ethyl alcohol need be regulated as hazardous materials, including evaluations of incidents containing the products, risks posed by the products, costs to industry of the designation, and comments from the industry and public regarding the designation.

## TITLE X – WATERBORNE TRANSPORTATION

*Sec. 10001. Sense of Congress on harbor maintenance.*

This section establishes a Sense of Congress that the funds collected by the Harbor Maintenance Tax be utilized for their intended purpose. The Harbor Maintenance Trust Fund provides funds for the United States Army Corps of Engineers to carry out the dredging of navigation channels to their authorized depths and widths.

*Sec. 10002. Study and report on strategic ports.*



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This section requires the Secretary of Transportation to carry out a study to determine the land-side infrastructure requirements of the nation's 21 strategic ports. These ports are designated by DOT and the Department of Defense as integral to the readiness capability of the nation's armed forces.

## TITLE XI – REAUTHORIZATION AND AMENDMENTS TO THE SPORT FISH RESTORATION AND BOATING TRUST FUND

### *Sec. 11001. Short title.*

This establishes the short title for Title XI as the “Sportfishing and Recreational Boating Safety Act of 2012”.

### *Sec. 11002. Reauthorization and amendments to the sport fish restoration and boating trust fund.*

This section reauthorizes the Dingell/Johnson Sport Fish Restoration Act through fiscal year 2016. It reduces Coast Guard administrative expenses and reallocates funding to the Coast Guard's Recreational Boating Safety Program and Recreational Boating Safety grants available to the states.

Title XI does not affect the Act's sport fish restoration programs, nor does it make changes to the Act's formulas or financing mechanisms.

## TITLE XII – EXTENSION OF SURFACE TRANSPORTATION PROGRAMS

### *Sec. 12001. Short title; effective date.*

This title may be cited as the “Surface Transportation Extension Act of 2012”.

The amendments made by this title take effect on April 1, 2012.

## SUBTITLE A – FEDERAL-AID HIGHWAYS

### *Sec. 12101. Extension of federal-aid highway programs.*

This section extends the federal-aid highway programs through fiscal year 2012.

## SUBTITLE B – EXTENSION OF HIGHWAY SAFETY PROGRAMS

### *Sec. 12201. Extension of National Highway Traffic Safety Administration highway safety programs.*

This section extends the National Highway Traffic Safety Administration Highway Safety programs through fiscal year 2012.

*Sec. 12202. Extension of federal motor carrier safety administration programs.*

This section extends the Federal Motor Carrier Safety Administration programs through fiscal year 2012.

*Sec. 12203. Additional programs.*

This section extends hazmat research projects and the Dingell-Johnson Sport Fish Restoration Act through fiscal year 2012.

SUBTITLE C – PUBLIC TRANSPORTATION PROGRAMS

*Sec. 12301. Allocation of funds for planning programs.*

This section extends funding for public transportation planning programs through fiscal year 2012.

*Sec. 12302. Special rule for urbanized area formula grants.*

This section extends the special rule for urbanized area formula grants through fiscal year 2012.

*Sec. 12303. Allocating amounts for capital investment grants.*

This section extends capital investment grants through fiscal year 2012.

*Sec. 12304. Apportionment of formula grants for other than urbanized areas.*

This section extends the apportionment of formula grants for other than urbanized areas through fiscal year 2012.

*Sec. 12305. Apportionment based on fixed guideway factors.*

This section strikes subsection (g) from 49 U.S.C. §5337.

*Sec. 12306. Authorizations for public transportation.*

This section extends authorizations for public transportation through fiscal year 2012.

*Sec. 12307. Amendments to SAFETEA-LU.*

This section extends the amendments to SAFETEA-LU through fiscal year 2012.

TITLE XIII – ADDITIONAL TRANSPORTATION PROVISIONS

*Sec. 13001. Audit of Union Station Redevelopment Corporation.*

This section directs the Inspector general of the DOT to audit the Union Station Redevelopment Corporation once every two years.

*Sec. 13002. Prohibition on use of funds.*

This section prohibits funds made available in this Act from being used for signage indicating the project was funded under this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows:

*[insert Ramseyer]*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

[The Surface Transportation Extension Act of 2012 (title XII of H.R. 7, as reported) provides for a short term extension of surface transportation programs. The amendments to provisions of existing law made by such title, set out below, take effect on April 1, 2012.]

**SURFACE TRANSPORTATION EXTENSION ACT OF 2011,  
PART II**

\* \* \* \* \*

**TITLE I—EXTENSION OF SURFACE  
TRANSPORTATION PROGRAMS**

\* \* \* \* \*

**Subtitle A—Federal-Aid Highways**

**SEC. 111. EXTENSION OF FEDERAL-AID HIGHWAY PROGRAMS.**

(a) **IN GENERAL.**—Except as provided in this title, requirements, authorities, conditions, eligibilities, limitations, and other provisions authorized under titles I, V, and VI of SAFETEA-LU (Public Law 109-59), the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244), titles I and VI of the Intermodal Surface Transportation Act of 1991 (Public Law 102-240), titles I and V of the Transportation Equity Act for the 21st Century (Public Law 105-178), and title 23, United States Code (excluding chapter 4 of that title), which would otherwise expire on or cease to apply after September 30, 2011, under section 411(a) of the Surface Transportation Extension Act of 2010 (title IV of Public Law 111-147) are incorporated by reference and shall continue in effect until **[March 31, 2012]** *September 30, 2012*.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—Except as provided in section 112, there is authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) for **[the period beginning on October 1, 2011, and ending on March 31, 2012,]** *fiscal year 2012* a sum equal to **[½ of]** the total amount authorized to be appropriated out of the Highway Trust Fund for programs, projects, and activities for fiscal year 2011 under titles I, V, and VI of SAFETEA-LU (119 Stat. 1144) and title 23, United States Code (excluding chapter 4 of that title).

(c) **USE OF FUNDS.**—

(1) FISCAL YEAR 2012.—Except as otherwise expressly provided in this title, funds authorized to be appropriated under subsection (b) for [the period beginning on October 1, 2011, and ending on March 31, 2012,] *fiscal year 2012* shall be distributed, administered, limited, and made available for obligation in the same manner and at the same level as [ $\frac{1}{2}$  of] the total amount of funds authorized to be appropriated out of the Highway Trust Fund for fiscal year 2011 to carry out programs, projects, activities, eligibilities, and requirements under SAFETEA-LU (Public Law 109-59), the SAFETEA-LU Technical Corrections Act of 2008 (Public Law 110-244), titles I and VI of the Intermodal Surface Transportation Act of 1991 (Public Law 102-240), titles I and V of the Transportation Equity Act for the 21st Century (Public Law 105-178), and title 23, United States Code (excluding chapter 4 of that title).

\* \* \* \* \*

(3) CONTRACT AUTHORITY.—

(A) IN GENERAL.—Except as provided in subparagraph (B), funds authorized to be appropriated under this section shall be available for obligation and shall be administered in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code, and for [the period beginning on October 1, 2011, and ending on March 31, 2012,] *fiscal year 2012* shall be subject to a limitation on obligations for Federal-aid highways and highway safety construction programs included in an Act making appropriations for fiscal year 2012 or a portion of that fiscal year[, except that during such period obligations subject to such limitation shall not exceed  $\frac{1}{2}$  of the limitation on obligations included in an Act making appropriations for fiscal year 2012].

(B) EXCEPTIONS.—A limitation on obligations described in subparagraph (A) shall not apply to any obligation under—

(i) \* \* \*

(ii) section 105 of title 23, United States Code, for [the period beginning on October 1, 2011, and ending on March 31, 2012,] *fiscal year 2012* only in an amount equal to [\$319,500,000] \$639,000,000.

[(4) CALCULATIONS FOR DISTRIBUTION OF OBLIGATION LIMITATION.—Upon enactment of an Act making appropriations for the Department of Transportation for fiscal year 2012 (other than an Act or resolution making continuing appropriations), the Secretary shall—

[(A) as necessary for purposes of making the calculations for the distribution of any obligation limitation under such Act, annualize the amount of contract authority provided under this title for the period beginning on October 1, 2011, and ending on March 31, 2012, for Federal-aid highways and highway safety construction programs; and

[(B) multiply the resulting distribution of any obligation limitation under such Act by  $\frac{1}{2}$ .]

(d) EXTENSION AND FLEXIBILITY FOR CERTAIN ALLOCATED PROGRAMS.—

(1) FISCAL YEAR 2012.—Notwithstanding any other provision of law, for [the period beginning on October 1, 2011, and ending on March 31, 2012,] *fiscal year 2012* the portion of the share of funds of a State under subsection (b) determined by [ $\frac{1}{2}$  of] the amount that the State received or was authorized to receive for fiscal year 2011 to carry out sections 1301, 1302, 1307, 1702, and 1934 of SAFETEA-LU (119 Stat. 1198, 1204, 1217, 1256, and 1485) and section 144(f)(1) of title 23, United States Code, shall be—

(A) \* \* \*

\* \* \* \* \*

(2) TERRITORIES AND PUERTO RICO.—

(A) FISCAL YEAR 2012.—Notwithstanding any other provision of law, for [the period beginning on October 1, 2011, and ending on March 31, 2012,] *fiscal year 2012* the portion of the share of funds of a territory or Puerto Rico under subsection (b) determined by [ $\frac{1}{2}$  of] the amount that the territory or Puerto Rico received or was authorized to receive for fiscal year 2011 to carry out section 1934 of SAFETEA-LU (119 Stat. 1485), shall be—

(i) \* \* \*

\* \* \* \* \*

(e) EXTENSION OF AUTHORIZATIONS UNDER TITLE V OF SAFETEA-LU.—

(1) IN GENERAL.—The programs authorized under paragraphs (1) through (5) of section 5101(a) of SAFETEA-LU (119 Stat. 1779) shall be continued for [the period beginning on October 1, 2011, and ending on March 31, 2012,] *fiscal year 2012* at [ $\frac{1}{2}$  of] the funding levels authorized for those programs for fiscal year 2011.

(2) DISTRIBUTION OF FUNDS.—Funds for programs continued under paragraph (1) shall be distributed to major program areas under those programs in the same proportions as funds were allocated for those program areas for fiscal year 2011, except that designations for specific activities shall not be required to be continued for [the period beginning on October 1, 2011, and ending on March 31, 2012,] *fiscal year 2012*.

\* \* \* \* \*

# SEC. 112. ADMINISTRATIVE EXPENSES.

(a) AUTHORIZATION OF CONTRACT AUTHORITY.—Notwithstanding any other provision of this title or any other law, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account), from amounts provided under section 111, for administrative expenses of the Federal-aid highway program [\$196,427,625 for the period beginning on October 1, 2011, and ending on March 31, 2012.] \$392,855,250 for *fiscal year 2012*.

\* \* \* \* \*

## SAFETEA-LU

\* \* \* \* \*

## TITLE II—HIGHWAY SAFETY

## SEC. 2001. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The following sums are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account):

(1) HIGHWAY SAFETY PROGRAMS.—For carrying out section 402 of title 23, United States Code, \$163,680,000 for fiscal year 2005, \$217,000,000 for fiscal year 2006, \$220,000,000 for fiscal year 2007, \$225,000,000 for fiscal year 2008, *[\$235,000,000 for fiscal year 2009, \$235,000,000 for fiscal year 2010, \$235,000,000 for fiscal year 2011, and \$117,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] and \$235,000,000 for each of fiscal years 2009 through 2012.*

(2) HIGHWAY SAFETY RESEARCH AND DEVELOPMENT.—For carrying out section 403 of title 23, United States Code, \$71,424,000 for fiscal year 2005, \$110,000,000 for fiscal year 2006, \$107,750,000 for fiscal year 2007, \$107,750,000 for fiscal year 2008, \$105,500,000 for fiscal year 2009, \$107,329,000 for fiscal year 2010, *[\$108,244,000 for fiscal year 2011, and \$54,122,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] and \$108,244,000 for each of fiscal years 2011 and 2012.*

(3) OCCUPANT PROTECTION INCENTIVE GRANTS.—For carrying out section 405 of title 23, United States Code, \$19,840,000 for fiscal year 2005, *[\$25,000,000 for fiscal year 2006, \$25,000,000 for fiscal year 2007, \$25,000,000 for fiscal year 2008, \$25,000,000 for fiscal year 2009, \$25,000,000 for fiscal year 2010, \$25,000,000 for fiscal year 2011, and \$12,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] and \$25,000,000 for each of fiscal years 2006 through 2012.*

(4) SAFETY BELT PERFORMANCE GRANTS.—For carrying out section 406 of title 23, United States Code, \$124,500,000 for fiscal year 2006, \$124,500,000 for fiscal year 2007, \$124,500,000 for fiscal year 2008, \$124,500,000 for fiscal year 2009, \$124,500,000 for fiscal year 2010, \$124,500,000 for fiscal year 2011, *[and \$24,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] and \$48,500,000 for fiscal year 2012.*

(5) STATE TRAFFIC SAFETY INFORMATION SYSTEM IMPROVEMENTS.—For carrying out section 408 of title 23, United States Code, \$34,500,000 *[for fiscal year 2006, \$34,500,000 for fiscal year 2007, \$34,500,000 for fiscal year 2008, \$34,500,000 for fiscal year 2009, \$34,500,000 for fiscal year 2010, \$34,500,000 for fiscal year 2011, and \$17,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] for each of fiscal years 2006 through 2012.*

(6) ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES INCENTIVE GRANT PROGRAM.—For carrying out section 410 of title 23, United States Code, \$39,680,000 for fiscal year 2005, \$120,000,000 for fiscal year 2006, \$125,000,000 for fiscal year 2007, \$131,000,000 for fiscal year 2008, [*\$139,000,000 for fiscal year 2009, \$139,000,000 for fiscal year 2010, \$139,000,000 for fiscal year 2011, and \$69,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.*] and *\$139,000,000 for each of fiscal years fiscal years 2009 through 2012.*

(7) NATIONAL DRIVER REGISTER.—For the National Highway Traffic Safety Administration to carry out chapter 303 of title 49, United States Code, \$3,968,000 for fiscal year 2005, \$4,000,000 for fiscal year 2006, \$4,000,000 for fiscal year 2007, \$4,000,000 for fiscal year 2008, \$4,000,000 for fiscal year 2009, \$4,078,000 for fiscal year 2010, \$4,116,000 for fiscal year 2011, [*and \$2,058,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.*] and *\$4,000,000 for fiscal year 2012.*

(8) HIGH VISIBILITY ENFORCEMENT PROGRAM.—For carrying out section 2009 of this title \$29,000,000 [*for fiscal year 2006, \$29,000,000 for fiscal year 2007, \$29,000,000 for fiscal year 2008, \$29,000,000 for fiscal year 2009, \$29,000,000 for fiscal year 2010, \$29,000,000 for fiscal year 2011, and \$14,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.*] *for each of fiscal years 2006 through 2012.*

(9) MOTORCYCLIST SAFETY.—For carrying out section 2010 of this title \$6,000,000 for fiscal year 2006, \$6,000,000 for fiscal year 2007, \$6,000,000 for fiscal year 2008, [*\$7,000,000 for fiscal year 2009, \$7,000,000 for fiscal year 2010, \$7,000,000 for fiscal year 2011, and \$3,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.*] and *\$7,000,000 for each of fiscal years 2009 through 2012.*

(10) CHILD SAFETY AND CHILD BOOSTER SEAT SAFETY INCENTIVE GRANTS.—For carrying out section 2011 of this title \$6,000,000 for fiscal year 2006, \$6,000,000 for fiscal year 2007, \$6,000,000 for fiscal year 2008, [*\$7,000,000 for fiscal year 2009, \$7,000,000 for fiscal year 2010, \$7,000,000 for fiscal year 2011, and \$3,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.*] and *\$7,000,000 for each of fiscal years 2009 through 2012.*

(11) ADMINISTRATIVE EXPENSES.—For administrative and related operating expenses of the National Highway Traffic Safety Administration in carrying out chapter 4 of title 23, United States Code, and this title \$17,500,000 for fiscal year 2006, \$17,750,000 for fiscal year 2007, \$18,250,000 for fiscal year 2008, \$18,500,000 for fiscal year 2009, \$25,047,000 for fiscal year 2010, [*\$25,328,000 for fiscal year 2011, and \$12,664,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.*] and *\$25,328,000 for each of fiscal years 2011 and 2012.*

\* \* \* \* \*



## TITLE III—PUBLIC TRANSPORTATION

\* \* \* \* \*

### SEC. 3009. URBANIZED AREA FORMULA GRANTS.

(a) \* \* \*

\* \* \* \* \*

#### (i) CONTRACTED PARATRANSIT PILOT.—

(1) IN GENERAL.—Notwithstanding section 5302(a)(1)(I) of title 49, United States Code, for fiscal years 2005 through [2011 and the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012, a recipient of assistance under section 5307 of such title in urbanized areas with a population of 558,329 or 747,003 according to the 2000 decennial census of population may use not more than 20 percent of such recipient's annual formula apportionment under section 5307 of such title for the provision of nonfixed route paratransit services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only if the grant recipient is in compliance with applicable requirements of that Act, including both fixed route and demand responsive service and the service is acquired by contract.

\* \* \* \* \*

### SEC. 3011. CAPITAL INVESTMENT GRANTS.

(a) \* \* \*

\* \* \* \* \*

#### (c) PUBLIC-PRIVATE PARTNERSHIP PILOT PROGRAM.—

(1) \* \* \*

\* \* \* \* \*

(5) PROGRAM TERM.—The Secretary may approve an application of a recipient for a public-private partnership for fiscal years 2006 through [2011 and the period beginning on October 1, 2011, and ending on March 31, 2012] 2012.

\* \* \* \* \*

(d) RESTRICTIONS ON USE OF BUS CATEGORY FUNDS FOR FIXED GUIDEWAY PROJECTS.—Funds provided to grantees under the bus and bus facility category for fixed guideway ferry and gondola projects in the Department of Transportation and Related Agencies Appropriations Acts for any of fiscal years 1998 through 2005, or accompanying committee reports, that remain available and unobligated may be used for new fixed guideway capital projects under section 5309 of title 49, United States Code. Funds made available to the same grantees for similar projects under the bus and bus facility category of section 5309 of title 49, United States Code, in fiscal years 2006 through [2011 and the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 may be used for fixed guideway projects under that section.

\* \* \* \* \*

**SEC. 3012. FORMULA GRANTS FOR SPECIAL NEEDS OF ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.**

(a) \* \* \*

(b) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES PILOT PROGRAM.—

(1) \* \* \*

\* \* \* \* \*

(8) SUNSET.—This subsection shall cease to be effective on [March 31, 2012] *September 30, 2012.*

\* \* \* \* \*

**SEC. 3040. OBLIGATION CEILING.**

Notwithstanding any other provision of law, the total of all obligations from amounts made available from the Mass Transit Account of the Highway Trust Fund by, and amounts appropriated under, subsections (a) through (f) of section 5338 of title 49, United States Code, shall not exceed—

(1) \* \* \*

\* \* \* \* \*

[(8) \$5,059,238,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, of which not more than \$4,180,282,500 shall be from the Mass Transit Account.]

(8) *\$10,458,278,000 for fiscal year 2012, of which not more than \$8,360,565,000 shall be from the Mass Transit Account.*

\* \* \* \* \*

**SEC. 3043. PROJECT AUTHORIZATIONS FOR NEW FIXED GUIDEWAY CAPITAL PROJECTS.**

(a) \* \* \*

(b) FINAL DESIGN AND CONSTRUCTION.—The following projects are authorized for final design and construction for fiscal years 2005 through [2011 and the period beginning on October 1, 2011, and ending on March 31, 2012,] *2012* under paragraphs (1)(A) and (2)(A) of section 5309(m) of title 49, United States Code:

(1) \* \* \*

\* \* \* \* \*

(c) PRELIMINARY ENGINEERING.—The following projects are authorized for preliminary engineering for fiscal years 2005 through [2011 and the period beginning on October 1, 2011, and ending on March 31, 2012,] *2012* under paragraphs (1)(A) and (2)(A) of section 5309(m) of title 49, United States Code:

(1) \* \* \*

\* \* \* \* \*

**SEC. 3046. ALLOCATIONS FOR NATIONAL RESEARCH AND TECHNOLOGY PROGRAMS.**

(a) \* \* \*

(b) REMAINDER.—After making allocations under subsection (a), the remainder of funds made available by section 5338(d) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 for a [fiscal year or period] *fiscal year* shall be allocated at the discretion of the Secretary to other transit research, development, demonstration and

deployment projects authorized by sections 5312, 5314, and 5322 of such title.

(c) **ADDITIONAL APPROPRIATIONS.**—The Secretary shall allocate amounts appropriated pursuant to section 5338(d) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 of such title—

(1) \* \* \*

[(2) for the period beginning on October 1, 2011, and ending on March 31, 2012, in amounts equal to 50 percent of 85 percent of the amounts allocated for fiscal year 2009 under each of paragraphs (2), (3), (5), (6), and (8) through (25) of subsection (a).]

(2) *for fiscal year 2012, in amounts equal to 63 percent of the amounts allocated for fiscal year 2009 under each of paragraphs (2), (3), (5), and (8) through (25) of subsection (a).*

\* \* \* \* \*

## TITLE IV—MOTOR CARRIER SAFETY

\* \* \* \* \*

### Subtitle A—Commercial Motor Vehicle Safety

#### SEC. 4101. AUTHORIZATION OF APPROPRIATIONS.

(a) \* \* \*

\* \* \* \* \*

(c) **GRANT PROGRAMS.**—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) the following sums for the following Federal Motor Carrier Safety Administration programs:

(1) **COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENT GRANTS.**—For commercial driver's license program improvement grants under section 31313 of title 49, United States Code \$25,000,000 for each of fiscal years 2006 through 2011 [and \$15,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] *and \$30,000,000 for fiscal year 2012.*

(2) **BORDER ENFORCEMENT GRANTS.**—For border enforcement grants under section 31107 of such title \$32,000,000 for each of fiscal years 2006 through [2011 and \$16,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] *2012.*

(3) **PERFORMANCE AND REGISTRATION INFORMATION SYSTEM MANAGEMENT GRANT PROGRAM.**—For the performance and registration information system management grant program under section 31109 of such title \$5,000,000 for each of fiscal years 2006 through [2011 and \$2,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] *2012.*

(4) **COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT.**—For carrying out the commercial vehicle

information systems and networks deployment program under section 4126 of this Act, \$25,000,000 for each of fiscal years 2006 through [2011 and \$12,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] 2012.

(5) SAFETY DATA IMPROVEMENT GRANTS.—For safety data improvement grants under section 4128 of this Act \$2,000,000 for fiscal year 2006 and \$3,000,000 for each of fiscal years 2007 through [2011 and \$1,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] 2012.

\* \* \* \* \*

**SEC. 4127. OUTREACH AND EDUCATION.**

(a) \* \* \*

\* \* \* \* \*

(e) FUNDING.—From amounts made available under section 31104(i) of title 49, United States Code, the Secretary shall make available \$1,000,000 to the Federal Motor Carrier Safety Administration, and \$3,000,000 to the National Highway Traffic Safety Administration, for each of fiscal years 2006, 2007, 2008, 2009, 2010, [and 2011 (and \$500,000 to the Federal Motor Carrier Safety Administration, and \$1,500,000 to the National Highway Traffic Safety Administration, for the period beginning on October 1, 2011, and ending on March 31, 2012)] 2011, and 2012 to carry out this section (other than subsection (f)).

\* \* \* \* \*

**SEC. 4134. GRANT PROGRAM FOR COMMERCIAL MOTOR VEHICLE OPERATORS.**

(a) \* \* \*

\* \* \* \* \*

(c) FUNDING.—From amounts made available under section 31104(i) of title 49, United States Code, the Secretary shall make available \$1,000,000 for each of fiscal years 2005 through [2011 and \$500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 to carry out this section.

\* \* \* \* \*

**SEC. 4144. MOTOR CARRIER SAFETY ADVISORY COMMITTEE.**

(a) \* \* \*

\* \* \* \* \*

(d) TERMINATION DATE.—Notwithstanding the Federal Advisory Committee Act (5 U.S.C. App.), the advisory committee shall terminate on [March 31, 2012] September 30, 2012.

\* \* \* \* \*

**Subtitle B—Household Goods  
Transportation**

\* \* \* \* \*

**SEC. 4213. WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND  
PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS.**

(a) \* \* \*

\* \* \* \* \*

(d) **TERMINATION DATE.**—The working group shall remain in effect until [March 31, 2012] *September 30, 2012*.

\* \* \* \* \*

**TITLE VII—HAZARDOUS MATERIALS  
TRANSPORTATION**

\* \* \* \* \*

**Subtitle A—General Authorities on  
Transportation of Hazardous Materials**

\* \* \* \* \*

**SEC. 7131. HAZARDOUS MATERIALS RESEARCH PROJECTS.**

(a) \* \* \*

\* \* \* \* \*

(c) **FUNDING.**—Of the amounts made available by section 5101(a)(1) of this Act, \$1,250,000 for each of fiscal years 2006 through [2011 and \$580,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] *2012* shall be available to carry out this section.

\* \* \* \* \*

**TITLE 49, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE III—GENERAL AND INTERMODAL  
PROGRAMS**

\* \* \* \* \*

**CHAPTER 53—PUBLIC TRANSPORTATION**

\* \* \* \* \*

**§ 5305. Planning programs**

(a) \* \* \*

\* \* \* \* \*

(g) **ALLOCATION OF FUNDS.**—Of the funds made available by or appropriated to carry out this section under section 5338(c) for fiscal years 2005 through [2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012] *2012*—

(1) \* \* \*

\* \* \* \* \*

**§ 5307. Urbanized area formula grants**

(a) \* \* \*

(b) GENERAL AUTHORITY.—

(1) \* \* \*

(2) [SPECIAL RULE FOR FISCAL YEARS 2005 THROUGH 2011 AND THE PERIOD BEGINNING ON OCTOBER 1, 2011, AND ENDING ON MARCH 31, 2012.—] *SPECIAL RULE FOR FISCAL YEARS 2005 THROUGH 2012.*—

(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2005 through [2011 and the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012, to finance the operating cost of equipment and facilities for use in public transportation in an urbanized area with a population of at least 200,000, as determined by the 2000 decennial census of population, if—

(i) \* \* \*

\* \* \* \* \*

(E) [MAXIMUM AMOUNTS IN FISCAL YEARS 2008 THROUGH 2011 AND THE PERIOD BEGINNING ON OCTOBER 1, 2011, AND ENDING ON MARCH 31, 2012.—] *MAXIMUM AMOUNTS IN FISCAL YEARS 2008 THROUGH 2012.*—In each of fiscal years 2008 through [2011 and during the period beginning on October 1, 2011, and ending on March 31, 2012] 2012—

(i) \* \* \*

\* \* \* \* \*

**§ 5309. Capital investment grants**

(a) \* \* \*

\* \* \* \* \*

(m) ALLOCATING AMOUNTS.—

(1) \* \* \*

(2) [FISCAL YEARS 2006 THROUGH 2011 AND THE PERIOD BEGINNING ON OCTOBER 1, 2011, AND ENDING ON MARCH 31, 2012.—] *FISCAL YEARS 2006 THROUGH 2012.*—The amounts made available or appropriated for fiscal years 2006 through [2011 and the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 under sections 5338(b) and 5338(c) shall be allocated as follows:

(A) CAPITAL INVESTMENT GRANTS.—Of the amounts appropriated under section 5338(c)—

(i) \$200,000,000 for each of fiscal years 2007 through [2011 and \$100,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 shall be allocated for projects for new

fixed guideway capital projects of less than \$75,000,000 in accordance with subsection (e); and

\* \* \* \* \*

(6) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A)—

(A) \* \* \*

(B) \$15,000,000 shall be available in each of fiscal years 2006 through [2011 and \$7,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 for capital projects in Alaska and Hawaii for new fixed guideway ferry systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; and

(C) \$5,000,000 shall be available for each of fiscal years 2006 through [2011 and \$2,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 for payments to the Denali Commission under the terms of section 307(e) of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) for docks, waterfront development projects, and related transportation infrastructure.

(7) BUS AND BUS FACILITY GRANTS.—The amounts made available under paragraphs (1)(C) and (2)(C) shall be allocated as follows:

(A) FERRY BOAT SYSTEMS.—\$10,000,000 shall be available in each of fiscal years 2006 through [2011 and \$5,000,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 for ferry boats or ferry terminal facilities. Of such funds, the following amounts shall be set aside for *each fiscal year*:

(i) \$2,500,000 [for each fiscal year and \$1,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the San Francisco Water Transit Authority.

(ii) \$2,500,000 [for each fiscal year and \$1,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the Massachusetts Bay Transportation Authority Ferry System.

(iii) \$1,000,000 [for each fiscal year and \$500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the Camden, New Jersey Ferry System.

(iv) \$1,000,000 [for each fiscal year and \$500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the Governor's Island, New York Ferry System.

(v) \$1,000,000 [for each fiscal year and \$500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the Philadelphia Penn's Landing Ferry Terminal.

(vi) \$1,000,000 [for each fiscal year and \$500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the Staten Island Ferry.

(vii) \$650,000 [for each fiscal year and \$325,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the Maine State Ferry Service, Rockland.

(viii) \$350,000 [for each fiscal year and \$175,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for the Swans Island, Maine Ferry Service.

(B) FUEL CELL BUS PROGRAM.—The following amounts shall be set aside for the national fuel cell bus technology development program under section 3045 of the Federal Public Transportation Act of 2005:

(i) \* \* \*

\* \* \* \* \*

[(vii) \$6,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

(vii) \$13,500,000 for fiscal year 2012.

(C) PROJECTS NOT IN URBANIZED AREAS.—Not less than 5.5 percent shall be available in each fiscal year [and during the period beginning on October 1, 2011, and ending on March 31, 2012,] for projects that are not in urbanized areas.

(D) INTERMODAL TERMINALS.—Not less than \$35,000,000 shall be available in each fiscal year [and not less than \$17,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,] for intermodal terminal projects, including the intercity bus portion of such projects.

(E) BUS TESTING.—\$3,000,000 shall be available in each fiscal year [and \$1,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,] for bus testing under section 5318.

\* \* \* \* \*

#### § 5311. Formula grants for other than urbanized areas

(a) \* \* \*

\* \* \* \* \*

(c) APPORTIONMENTS.—

(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

(A) \* \* \*

\* \* \* \* \*

[(G) \$7,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

(G) \$15,000,000 for fiscal year 2012.

\* \* \* \* \*



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**§ 5337. Apportionment based on fixed guideway factors**

(a) \* \* \*

\* \* \* \* \*

[(g) SPECIAL RULE FOR OCTOBER 1, 2011, THROUGH MARCH 31, 2012.—The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for the period beginning on October 1, 2011, and ending on March 31, 2012, in accordance with subsection (a), except that the Secretary shall apportion 50 percent of each dollar amount specified in subsection (a).]

**§ 5338. Authorizations**

(a) \* \* \*

(b) FORMULA AND BUS GRANTS.—

(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5305, 5307, 5308, 5309, 5310, 5311, 5316, 5317, 5320, 5335, 5339, and 5340 and section 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.) —

(A) \* \* \*

\* \* \* \* \*

[(G) \$4,180,282,500 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

(G) \$8,360,565,000 for fiscal year 2012.

(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)—

(A) \$95,000,000 for fiscal year 2006, \$99,000,000 for fiscal year 2007, \$107,000,000 for fiscal year 2008, [\$113,500,000 for each of fiscal years 2009 and 2010, \$113,500,000 for fiscal year 2011, and \$56,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] and \$113,500,000 for each of fiscal years 2009 through 2012 shall be available to carry out section 5305;

(B) \$3,466,681,000 for fiscal year 2006, \$3,606,175,000 for fiscal year 2007, \$3,910,843,000 for fiscal year 2008, [\$4,160,365,000 for each of fiscal years 2009 and 2010, \$4,160,365,000 for fiscal year 2011, and \$2,080,182,500 for the period beginning on October 1, 2011, and ending on March 31, 2012.] and \$4,160,365,000 for each of fiscal years 2009 through 2012 shall be allocated in accordance with section 5336 to provide financial assistance for urbanized areas under section 5307;

(C) \$43,000,000 for fiscal year 2006, \$45,000,000 for fiscal year 2007, \$49,000,000 for fiscal year 2008, [\$51,500,000 for each of fiscal years 2009 and 2010, \$51,500,000 for fiscal year 2011, and \$25,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.] and \$51,500,000 for each of fiscal years 2009 through 2012 shall be available to carry out section 5308;

(D) \$1,391,000,000 for fiscal year 2006, \$1,448,000,000 for fiscal year 2007, \$1,570,000,000 for fiscal year 2008, [\$1,666,500,000 for each of fiscal years 2009 and 2010, \$1,666,500,000 for fiscal year 2011, and \$833,250,000 for the period beginning on October 1, 2011, and ending on

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March 31, 2012,] and \$1,666,500,000 for each of fiscal years 2009 through 2012 shall be allocated in accordance with section 5337 to provide financial assistance under section 5309(m)(2)(B);

(E) \$822,250,000 for fiscal year 2006, \$855,500,000 for fiscal year 2007, \$927,750,000 for fiscal year 2008, [\$984,000,000 for each of fiscal years 2009 and 2010, \$984,000,000 for fiscal year 2011, and \$492,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$984,000,000 for each of fiscal years 2009 through 2012 shall be available to carry out section 5309(m)(2)(C);

(F) \$112,000,000 for fiscal year 2006, \$117,000,000 for fiscal year 2007, \$127,000,000 for fiscal year 2008, [\$133,500,000 for each of fiscal years 2009 and 2010, \$133,500,000 for fiscal year 2011, and \$66,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$133,500,000 for each of fiscal years 2009 through 2012 shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;

(G) \$388,000,000 for fiscal year 2006, \$404,000,000 for fiscal year 2007, \$438,000,000 for fiscal year 2008, [\$465,000,000 for each of fiscal years 2009 and 2010, \$465,000,000 for fiscal year 2011, and \$232,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$465,000,000 for each of fiscal years 2009 through 2012 shall be available to provide financial assistance for other than urbanized areas under section 5311;

(H) \$138,000,000 for fiscal year 2006, \$144,000,000 for fiscal year 2007, \$156,000,000 for fiscal year 2008, [\$164,500,000 for each of fiscal years 2009 and 2010, \$164,500,000 for fiscal year 2011, and \$82,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$164,500,000 for each of fiscal years 2009 through 2012 shall be available to carry out section 5316;

(I) \$78,000,000 for fiscal year 2006, \$81,000,000 for fiscal year 2007, \$87,500,000 for fiscal year 2008, [\$92,500,000 for each of fiscal years 2009 and 2010, \$92,500,000 for fiscal year 2011, and \$46,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$92,500,000 for each of fiscal years 2009 through 2012 shall be available to carry out section 5317;

(J) \$22,000,000 for fiscal year 2006, \$23,000,000 for fiscal year 2007, \$25,000,000 for fiscal year 2008, [\$26,900,000 for each of fiscal years 2009 and 2010, \$26,900,000 for fiscal year 2011, and \$13,450,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$26,900,000 for each of fiscal years 2009 through 2012 shall be available to carry out section 5320;

(K) \$3,500,000 [in fiscal year 2006; \$3,500,000 in fiscal year 2007; \$3,500,000 in fiscal year 2008; \$3,500,000 for each of fiscal years 2009 and 2010, \$3,500,000 for fiscal year 2011, and \$1,750,000 for the period beginning on Oc-

tober 1, 2011, and ending on March 31, 2012,] for each of fiscal years 2006 through 2012 shall be available to carry out section 5335;

(L) \$25,000,000 [in fiscal year 2006; \$25,000,000 in fiscal year 2007; \$25,000,000 in fiscal year 2008; \$25,000,000 for each of fiscal years 2009 and 2010, \$25,000,000 for fiscal year 2011, and \$12,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for each of fiscal years 2006 through 2012 shall be available to carry out section 5339;

(M) \$388,000,000 for fiscal year 2006, \$404,000,000 for fiscal year 2007, \$438,000,000 for fiscal year 2008, [\$465,000,000 for each of fiscal years 2009 and 2010, \$465,000,000 for fiscal year 2011, and \$232,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$465,000,000 for each of fiscal years 2009 through 2012 shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and

(N) \$7,500,000 for fiscal year 2006, \$7,600,000 for fiscal year 2007, \$8,300,000 for fiscal year 2008, [\$8,800,000 for each of fiscal years 2009 and 2010, \$8,800,000 for fiscal year 2011, and \$4,400,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] and \$8,800,000 for each of fiscal years 2009 through 2012 shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(c) CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(m)(2)(A)—

(1) \* \* \*

\* \* \* \* \*

[(7) \$800,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

(7) \$1,600,000,000 for fiscal year 2012.

(d) RESEARCH AND UNIVERSITY RESEARCH CENTERS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5506, and national research programs under sections 5312, 5313, 5314, and 5322 \$58,000,000 for fiscal year 2006, \$61,000,000 for fiscal year 2007, \$65,500,000 for fiscal year 2008, \$69,750,000 for each of fiscal years 2009 [and 2010, \$69,750,000 for fiscal year 2011, and \$29,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] through 2011 and \$44,000,000 for fiscal year 2012 of which—

(A) \* \* \*

\* \* \* \* \*

[(3) ADDITIONAL AUTHORIZATIONS.—

[(A) OCTOBER 1, 2011, THROUGH MARCH 31, 2012.—Of amounts authorized to be appropriated for the period be-

ginning on October 1, 2011, and ending on March 31, 2012, under paragraph (1), the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to 50 percent of 85 percent of the amount allocated for fiscal year 2009 under each such subparagraph.

[(B) UNIVERSITY CENTERS PROGRAM.—

[(i) OCTOBER 1, 2011, THROUGH MARCH 31, 2012.—Of the amounts allocated under subparagraph (A)(i) for the university centers program under section 5506 for the period beginning on October 1, 2011, and ending on March 31, 2012, the Secretary shall allocate for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2)(A) an amount equal to 50 percent of 85 percent of the amount allocated for fiscal year 2009 under each such clause.

[(ii) FUNDING.—If the Secretary determines that a project or activity described in paragraph (2) received sufficient funds in fiscal year 2011, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under clause (i) for the project or activity for fiscal year 2012, or any subsequent fiscal year.]

(3) ADDITIONAL AUTHORIZATIONS.—

(A) RESEARCH.—Of amounts authorized to be appropriated under paragraph (1) for fiscal year 2012, the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to 63 percent of the amount allocated for fiscal year 2009 under each such subparagraph.

(B) UNIVERSITY CENTERS PROGRAM.—

(i) FISCAL YEAR 2012.—Of the amounts allocated under subparagraph (A)(i) for the university centers program under section 5506 for fiscal year 2012, the Secretary shall allocate for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2)(A) an amount equal to 63 percent of the amount allocated for fiscal year 2009 under each such clause.

(ii) FUNDING.—If the Secretary determines that a project or activity described in paragraph (2) received sufficient funds in fiscal year 2011, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under clause (i) for the project or activity for fiscal year 2012 or any subsequent fiscal year.

(e) ADMINISTRATION.—There is authorized to be appropriated to carry out section 5334—

(1) \* \* \*

\* \* \* \* \*

[(7) \$49,455,500 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

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(7) \$98,713,000 for fiscal year 2012.

\* \* \* \* \*

**SUBTITLE VI—MOTOR VEHICLE AND DRIVER  
PROGRAMS**

\* \* \* \* \*

**PART B—COMMERCIAL**

\* \* \* \* \*

**CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY**

\* \* \* \* \*

**SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS  
PROGRAMS**

\* \* \* \* \*

**§ 31104. Availability of amounts**

(a) IN GENERAL.—Subject to subsection (f), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102—

(1) \* \* \*

\* \* \* \* \*

[(8) \$106,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

(8) \$212,000,000 for fiscal year 2012.

\* \* \* \* \*

(i) ADMINISTRATIVE EXPENSES.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

(A) \* \* \*

\* \* \* \* \*

[(H) \$122,072,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.]

(H) \$244,144,000 for fiscal year 2012.

\* \* \* \* \*

(k) HIGH-PRIORITY ACTIVITIES.—

(1) \* \* \*

(2) SET ASIDE.—The Secretary may set aside from amounts made available by subsection (a) up to \$15,000,000 for each of fiscal years 2006 through [2011 and \$7,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012 for States, local governments, and organizations representing government agencies or officials described in paragraph (3) for carrying out high priority activities and projects

that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations (including activities and projects that are national in scope), increase public awareness and education, demonstrate new technologies, and reduce the number and rate of accidents involving commercial motor vehicles.

\* \* \* \* \*

**SUBCHAPTER III—SAFETY REGULATION**

\* \* \* \* \*

**§ 31144. Safety fitness of owners and operators**

(a) \* \* \*

\* \* \* \* \*

(g) **SAFETY REVIEWS OF NEW OPERATORS.—**

(1) \* \* \*

\* \* \* \* \*

(5) **NEW ENTRANT AUDITS.—**

(A) \* \* \*

(B) **SET ASIDE.—**The Secretary shall set aside from amounts made available by section 31104(a) up to \$29,000,000 per fiscal year [and up to \$14,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,] for audits of new entrant motor carriers conducted pursuant to this paragraph.

\* \* \* \* \*

**DINGELL-JOHNSON SPORT FISH RESTORATION ACT**

\* \* \* \* \*

**SEC. 4. (a) IN GENERAL.—**For each of fiscal years 2006 through [2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012, the balance of each annual appropriation made in accordance with the provisions of section 3 remaining after the distributions for administrative expenses and other purposes under subsection (b) and for multistate conservation grants under section 14 shall be distributed as follows:

(1) \* \* \*

\* \* \* \* \*

(b) **SET-ASIDE FOR EXPENSES FOR ADMINISTRATION OF THE DINGELL-JOHNSON SPORT FISH RESTORATION ACT.—**

(1) **IN GENERAL.—**

(A) **SET-ASIDE FOR ADMINISTRATION.—**From the annual appropriation made in accordance with section 3, for each of fiscal years 2006 through [2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012,] 2012, the Secretary of the Interior may use no more than the amount specified in subparagraph (B) for the fiscal year for expenses for administration incurred in the implementation of this Act, in accordance with this section

and section 9. The amount specified in subparagraph (B) for a fiscal year may not be included in the amount of the annual appropriation distributed under subsection (a) for the fiscal year.

\* \* \* \* \*

[The version of existing law that appears below reflects the amendments made by H.R. 7, as reported, including the provisions subject to the effective date contained in section 3 of the bill. Where certain provisions of existing law are amended by both title XII and other titles of the bill, the version below reflects the execution of amendments by title XII—as if the amendments made by title XII reflect current law—in order to show the proposed amendments made by the other titles of the bill.]

# TITLE 23, UNITED STATES CODE

\* \* \* \* \*

## CHAPTER 1—FEDERAL-AID HIGHWAYS

Sec.						
101.	Definitions and declaration of policy.					
	* * *					
[110.	Revenue aligned budget authority.]					
	* * *					
[117.	High priority projects program.]					
	* * *					
[119.	Interstate maintenance program.]					
119.	National Highway System program.					
	* * *					
[136.	Control of junkyards.]					
	* * *					
[144.	Highway bridge program.]					
	* * *					
[151.	National bridge inspection program.]					
151.	National highway bridge and tunnel inventory and inspection program.					
[152.	Hazard elimination program.]					
	* * *					
[155.	Access highways to public recreation areas on certain lakes.					
[156.	Proceeds from the sale or lease of real property.					
[157.	Safety incentive grants for use of seat belts.]					
156.	Sale or lease of real property.					
	* * *					
[160.	Reimbursement for segments of the Interstate System constructed without Federal assistance.]					
	* * *					
[162.	National scenic byways program.]					
	* * *					
167.	Integration of planning and environmental review.					
168.	Development of programmatic mitigation plans.					

### § 101. Definitions and declaration of policy

(a) DEFINITIONS.—In this title, the following definitions apply:  
(1) \* \* \*

(2) CARPOOL PROJECT.—The term “carpool project” means any project to encourage the use of carpools and vanpools, including provision of carpooling opportunities to the elderly and individuals with disabilities, systems for locating potential riders and informing them of carpool opportunities, acquiring vehicles for carpool use, designating existing highway lanes as preferential carpool highway lanes, providing related traffic control devices, [and] designating existing facilities for use for preferential parking for carpools, *and real-time ridesharing projects (where drivers, using an electronic transfer of funds, recover costs directly associated with the trip provided using location technology to quantify the direct costs associated with the trip, if the cost recovered does not exceed the cost of the trip provided).*

\* \* \* \* \*

[(7) FEDERAL LANDS HIGHWAY.—The term “Federal lands highway” means a forest highway, public lands highway, park road, parkway, refuge road, and Indian reservation road that is a public road.]

\* \* \* \* \*

[(9) FOREST HIGHWAY.—The term “forest highway” means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.]

\* \* \* \* \*

[(12) INDIAN RESERVATION ROAD.—The term “Indian reservation road” means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.]

\* \* \* \* \*

[(19) PARK ROAD.—The term “park road” means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

[(20) PARKWAY.—The term “parkway”, as used in chapter 2 of this title, means a parkway authorized by Act of Congress on lands to which title is vested in the United States.]

\* \* \* \* \*

[(24) PUBLIC LANDS DEVELOPMENT ROADS AND TRAILS.—The term “public lands development roads and trails” means those roads and trails that the Secretary of the Interior determines are of primary importance for the development, protection, administration, and utilization of public lands and resources under the control of the Secretary of the Interior.



[(25) PUBLIC LANDS HIGHWAY.—The term “public lands highway” means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.]

[(26) PUBLIC LANDS HIGHWAYS.—The term “public lands highways” means those main highways through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations, which are on the Federal-aid systems.]

\* \* \* \* \*

[(28) REFUGE ROAD.—The term “refuge road” means a public road that provides access to or within a unit of the National Wildlife Refuge System and for which title and maintenance responsibility is vested in the United States Government.]

\* \* \* \* \*

(35) TRANSPORTATION ENHANCEMENT ACTIVITY.—The term “transportation enhancement activity” means, with respect to any project or the area to be served by the project, any of the following activities as the activities relate to surface transportation:

(A) \* \* \*

\* \* \* \* \*

[(C) Acquisition of scenic easements and scenic or historic sites (including historic battlefields).]

[(D)] (C) Scenic or historic highway programs (including the provision of tourist and welcome center facilities).

[(E)] (D) Landscaping and other scenic beautification.

[(F) Historic preservation.

[(G) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).

[(H) Preservation of abandoned railway corridors (including the conversion and use of the corridors for pedestrian or bicycle trails).]

[(I)] (E) Inventory, control, and removal of outdoor advertising.

[(J)] (F) Archaeological planning and research.

[(K)] (G) Environmental mitigation—

(i) \* \* \*

\* \* \* \* \*

[(L) Establishment of transportation museums.]

\* \* \* \* \*

(40) FEDERAL LAND MANAGEMENT AGENCY.—The term “Federal land management agency” means each of the following:

(A) The National Park Service.

(B) The Forest Service.

(C) The United States Fish and Wildlife Service.

(D) The Corps of Engineers.

- (E) *The Bureau of Land Management.*
- (41) *FEDERAL LANDS.*—The term “Federal lands” means lands administered by a Federal land management agency.
- (42) *FEDERAL LANDS HIGHWAY.*—The term “Federal lands highway” means a public road, highway, bridge, or trail that is located on, is adjacent to, or provides access to Federal lands and appears on the national inventory of Federal lands highways maintained under section 203(d).
- (43) *FEDERAL LANDS TRANSPORTATION FACILITY.*—The term “Federal lands transportation facility” means a transportation facility eligible for assistance under section 203(b).
- (44) *TRIBAL ROAD.*—The term “tribal road” means a public road, highway, bridge, or trail that is located on or provides access to tribal lands and appears on the national inventory of tribal roads maintained under section 202(c).
- (45) *TRIBAL TRANSPORTATION FACILITY.*—The term “tribal transportation facility” means a transportation facility eligible for assistance under section 202(b).
- (b) *DECLARATION OF POLICY.*—
  - (1) \* \* \*

- \* \* \* \* \*
- (4) *EXPEDITED PROJECT DELIVERY.*—Congress declares that it is in the national interest to expedite the delivery of surface transportation projects by substantially reducing the average length of the environmental review process. Accordingly, it is the policy of the United States that—
  - (A) the Secretary shall have the lead role among Federal agencies in carrying out the environmental review process for surface transportation projects;
  - (B) each Federal agency shall cooperate with the Secretary to expedite the environmental review process for surface transportation projects;
  - (C) there shall be a presumption that the mode, facility type, and corridor location for a surface transportation project will be determined in the transportation planning process, as established in sections 5203 and 5204 of title 49;
  - (D) project sponsors shall not be prohibited from carrying out pre-construction project development activities concurrently with the environmental review process;
  - (E) programmatic approaches shall be used, to the maximum extent possible, to reduce the need for project-by-project reviews and decisions by Federal agencies; and
  - (F) the Secretary shall actively support increased opportunities for project sponsors to assume responsibilities of the Secretary in carrying out the environmental review process.

**§ 103. Federal-aid systems**

- (a) \* \* \*
- (b) *NATIONAL HIGHWAY SYSTEM.*—

(1) DESCRIPTION.—The National Highway System consists of the highway routes and connections to transportation facilities depicted on the map submitted by the Secretary to Congress with the report entitled “Pulling Together: The National Highway System and its Connections to Major Intermodal Terminals” and dated May 24, 1996 *and the modifications to the system approved by the Secretary before the date of enactment of the American Energy and Infrastructure Jobs Act of 2012.* The system shall—

(A) \* \* \*

\* \* \* \* \*

(C) serve interstate and interregional travel *and commerce.*

(2) COMPONENTS.—The National Highway System described in paragraph (1) consists of the following:

(A) \* \* \*

(B) Other urban and rural principal arterial routes *and border crossings on such routes not included on the National Highway System before the date of enactment of the American Energy and Infrastructure Jobs Act of 2012.*

(C) Other connector highways (including toll facilities) that provide motor vehicle access between arterial routes on the National Highway System and a major intermodal transportation facility *not included on the National Highway System before the date of enactment of the American Energy and Infrastructure Jobs Act of 2012.*

\* \* \* \* \*

[(6) STATE ELIGIBLE PROJECTS FOR NHS.—Subject to approval by the Secretary, funds apportioned to a State under section 104(b)(1) for the National Highway System may be obligated for any of the following:

[(A) Construction, reconstruction, resurfacing, restoration, and rehabilitation of segments of the National Highway System.

[(B) Operational improvements for segments of the National Highway System.

[(C) Construction of, and operational improvements for, a Federal-aid highway not on the National Highway System, and construction of a transit project eligible for assistance under chapter 53 of title 49, if—

[(i) the highway or transit project is in the same corridor as, and in proximity to, a fully access-controlled highway designated as a part of the National Highway System;

[(ii) the construction or improvements will improve the level of service on the fully access-controlled highway described in clause (i) and improve regional traffic flow; and

[(iii) the construction or improvements are more cost-effective than an improvement to the fully access-controlled highway described in clause (i).

[(D) Highway safety improvements for segments of the National Highway System.

[(E) Transportation planning in accordance with sections 134 and 135.

[(F) Highway research and planning in accordance with chapter 5.

[(G) Highway-related technology transfer activities.

[(H) Capital and operating costs for traffic monitoring, management, and control facilities and programs.

[(I) Fringe and corridor parking facilities.

[(J) Carpool and vanpool projects.

[(K) Bicycle transportation and pedestrian walkways in accordance with section 217.

[(L) Development, establishment, and implementation of management systems under section 303.

[(M) In accordance with all applicable Federal law (including regulations), participation in natural habitat and wetland mitigation efforts related to projects funded under this title, which may include participation in natural habitat and wetland mitigation banks, contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetland, and development of statewide and regional natural habitat and wetland conservation and mitigation plans, including any such banks, efforts, and plans authorized under the Water Resources Development Act of 1990 (Public Law 101-640) (including crediting provisions). Contributions to the mitigation efforts described in the preceding sentence may take place concurrent with or in advance of project construction; except that contributions in advance of project construction may occur only if the efforts are consistent with all applicable requirements of Federal law (including regulations) and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).

[(N) Publicly-owned intracity or intercity bus terminals.

[(O) Infrastructure-based intelligent transportation systems capital improvements.

[(Q) Environmental restoration and pollution abatement in accordance with section 328.

[(R) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.

[(7) TERRITORY ELIGIBLE PROJECTS.—Subject to approval by the Secretary, funds set aside for this program under section 104(b)(1) for the National Highway System may be obli-

gated for projects eligible for assistance under the territorial highway program under section 215.]

**(6) REQUIREMENT FOR STATE ASSET MANAGEMENT PLAN FOR NATIONAL HIGHWAY SYSTEM.—**

**(A) IN GENERAL.**—A State shall develop and implement a risk-based State asset management plan for managing all infrastructure assets in the right-of-way corridor of the National Highway System based on a process established by the Secretary. The process shall require use of quality information and economic and engineering analysis to identify a sequence of maintenance, repair, and rehabilitation actions that will achieve and maintain a desired state of good repair over the lifecycle of the network at the least possible cost.

**(B) PERFORMANCE GOALS.**—A State asset management plan shall include strategies leading to a program of projects that will make progress toward achievement of the national goals for infrastructure condition and performance of the National Highway System in a manner consistent with the requirements of chapter 52 of title 49.

**(C) PLAN CONTENTS.**—A State asset management plan shall be in a form that the Secretary determines to be appropriate and shall include, at a minimum, the following:

- (i) A summary listing of the highway infrastructure assets on the National Highway System in the State that includes current condition and performance statistics by asset.
- (ii) Asset management objectives and measures.
- (iii) Analysis of lifecycle cost, value for investment, and risk management.
- (iv) A financial plan.
- (v) Investment strategies.

**(D) PROCESS.**—Not later than 2 years after the date of enactment of the American Energy and Infrastructure Jobs Act of 2012, the Secretary shall establish a process by which a State shall develop and implement a risk-based State asset management plan described in subparagraph (A).

**(E) COMPLIANCE.**—Notwithstanding section 120, with respect to the second fiscal year beginning after the date of establishment of the process under subparagraph (D) or any subsequent fiscal year, if the Secretary determines that a State has not developed and implemented a State asset management plan in a manner consistent with this section, the Federal share payable on account of any project or activity carried out by the State in that fiscal year under section 119 shall be 70 percent.

\* \* \* \* \*

**[§ 104. Apportionment**

**[(a) ADMINISTRATIVE EXPENSES.—**

**[(1) IN GENERAL.**—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit

Account) to be made available to the Secretary for administrative expenses of the Federal Highway Administration—

- [(A) \$353,024,000 for fiscal year 2005;
- [(B) \$370,613,540 for fiscal year 2006;
- [(C) \$389,079,500 for fiscal year 2007;
- [(D) \$408,465,500 for fiscal year 2008; and
- [(E) \$423,717,460 for fiscal year 2009.

[(2) PURPOSES.—The funds authorized by this subsection shall be used—

[(A) to administer the provisions of law to be financed from appropriations for the Federal-aid highway program and programs authorized under chapter 2; and

[(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system.

[(3) AVAILABILITY.—The funds made available under paragraph (1) shall remain available until expended.

[(b) APPORTIONMENTS.—On October 1 of each fiscal year, the Secretary, after making the set-asides authorized by subsections (d) and (f) and section 130(e), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the Interstate and National Highway System program, the Congestion Mitigation and Air Quality Improvement program, the highway safety improvement program, and the Surface Transportation program for that fiscal year, among the several States in the following manner:

[(1) NATIONAL HIGHWAY SYSTEM COMPONENT.—

[(A) IN GENERAL.—For the National Highway System (excluding funds apportioned under paragraph (4)), \$40,000,000 for each of fiscal years 2005 and 2006 and \$50,000,000 for each of fiscal years 2007 through 2009 for the territorial highway program under section 215, \$30,000,000 for each of fiscal years 2005 through 2009 for the Alaska Highway, and the remainder apportioned as follows:

[(i) 25 percent in the ratio that—

[(I) the total lane miles of principal arterial routes (excluding Interstate System routes) in each State; bears to

[(II) the total lane miles of principal arterial routes (excluding Interstate System routes) in all States.

[(ii) 35 percent in the ratio that—

[(I) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in each State; bears to

[(II) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in all States.

[(iii) 30 percent in the ratio that—

[(I) the total diesel fuel used on highways in each State; bears to

[(II) the total diesel fuel used on highways in all States.

[(iv) 10 percent in the ratio that—

[(I) the quotient obtained by dividing the total lane miles on principal arterial highways in each State by the total population of the State; bears to

[(II) the quotient obtained by dividing the total lane miles on principal arterial highways in all States by the total population of all States.

[(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A) and paragraph (4), each State shall receive a minimum of  $\frac{1}{2}$  of 1 percent of the funds apportioned under subparagraph (A) and paragraph (4).

[(2) Congestion mitigation and air quality improvement program.—

[(A) IN GENERAL.—For the congestion mitigation and air quality improvement program, in the ratio that—

[(i) the total of all weighted nonattainment and maintenance area populations in each State; bears to

[(ii) the total of all weighted nonattainment and maintenance area populations in all States.

[(B) CALCULATION OF WEIGHTED NONATTAINMENT AND MAINTENANCE AREA POPULATION.—Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ozone or carbon monoxide by a factor of—

[(i) 1.0 if, at the time of apportionment, the area is a maintenance area;

[(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

[(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under such subpart;

[(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under such subpart;

[(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under such subpart;

[(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under such subpart;

[(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide; or

[(viii) 1.0 if, at the time of apportionment, an area is designated as nonattainment for ozone under sub-

part 1 of part D of title I of such Act (42 U.S.C. 7512 et seq.).

[(C) ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.—If, in addition to being designated as a nonattainment or maintenance area for ozone as described in section 149(b), any county within the area was also classified under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.) as a nonattainment or maintenance area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the county, as determined under clauses (i) through (vi) or clause (viii) of subparagraph (B), shall be further multiplied by a factor of 1.2.

[(D) MINIMUM APPORTIONMENT.—Notwithstanding any other provision of this paragraph, each State shall receive a minimum of 1/2 of 1 percent of the funds apportioned under this paragraph.

[(E) DETERMINATIONS OF POPULATION.—In determining population figures for the purposes of this paragraph, the Secretary shall use the latest available annual estimates prepared by the Secretary of Commerce.

[(3) SURFACE TRANSPORTATION PROGRAM.—

[(A) IN GENERAL.—For the surface transportation program, in accordance with the following formula:

[(i) 25 percent of the apportionments in the ratio that—

[(I) the total lane miles of Federal-aid highways in each State; bears to

[(II) the total lane miles of Federal-aid highways in all States.

[(ii) 40 percent of the apportionments in the ratio that—

[(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

[(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

[(iii) 35 percent of the apportionments in the ratio that—

[(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available; bears to

[(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) in the latest fiscal year for which data are available.

[(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of 1/2 of 1 percent of the funds apportioned under this paragraph.



[(4) INTERSTATE MAINTENANCE COMPONENT.—For resurfacing, restoring, rehabilitating, and reconstructing the Interstate System—

[(A) 33 1/3 percent in the ratio that—

[(i) the total lane miles on Interstate System routes open to traffic in each State; bears to

[(ii) the total of all such lane miles in all States;

[(B) 33 1/3 percent in the ratio that—

[(i) the total vehicle miles traveled on Interstate System routes open to traffic in each State; bears to

[(ii) the total of all such vehicle miles traveled in all States; and

[(C) 33 1/3 percent in the ratio that—

[(i) the total of each State's annual contributions to the Highway Trust Fund (other than the Mass Transit Account) attributable to commercial vehicles; bears to

[(ii) the total of such annual contributions by all States.

[(5) HIGHWAY SAFETY IMPROVEMENT PROGRAM.—

[(A) IN GENERAL.—For the highway safety improvement program, in accordance with the following formula:

[(i) 33 1/3 percent of the apportionments in the ratio that—

[(I) the total lane miles of Federal-aid highways in each State; bears to

[(II) the total lane miles of Federal-aid highways in all States.

[(ii) 33 1/3 percent of the apportionments in the ratio that—

[(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

[(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

[(iii) 33 1/3 percent of the apportionments in the ratio that—

[(I) the number of fatalities on Federal-aid highways in each State in the latest fiscal year for which data are available; bears to

[(II) the number of fatalities on Federal-aid highways in all States in the latest fiscal year for which data are available.

[(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of one-half of 1 percent of the funds apportioned under this paragraph.

[(c) TRANSFERABILITY OF NHS APPORTIONMENTS.—A State may transfer not to exceed 50 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3). A State may transfer not to exceed 100 percent of the State's apportionment under subsection (b)(1) to the apportionment of the State under subsection (b)(3) if the State requests to make such transfer and the Secretary approves such transfer as being in the public interest, after providing notice and sufficient op-

portunity for public comment. Section 133(d) shall not apply to funds transferred under this subsection.

[(d) OPERATION LIFESAVER AND HIGH SPEED RAIL CORRIDORS.—

[(1) OPERATION LIFESAVER.—To carry out a public information and education program to help prevent and reduce motor vehicle accidents, injuries, and fatalities and to improve driver performance at railway-highway crossings—

[(A) before making an apportionment under subsection (b)(3) for fiscal year 2005, the Secretary shall set aside \$560,000 for such fiscal year; and

[(B) there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$560,000 for each of fiscal years 2006 through 2009.

[(2) RAILWAY-HIGHWAY CROSSING HAZARD ELIMINATION IN HIGH SPEED RAIL CORRIDORS.—

[(A) FUNDING.—To carry out the elimination of hazards at railway-highway crossings—

[(i) before making an apportionment under subsection (b)(3) for fiscal year 2005, the Secretary shall set aside \$5,250,000 for such fiscal year; and

[(ii) there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) \$7,250,000 for fiscal year 2006, \$10,000,000 for fiscal year 2007, \$12,500,000 for fiscal year 2008, and \$15,000,000 for fiscal year 2009.

[(B) ELIGIBLE CORRIDORS.—Subject to subparagraph (E), funds made available under subparagraph (A) shall be expended for projects in—

[(i) 5 railway corridors selected by the Secretary in accordance with this subsection (as in effect on the day before the date of enactment of this clause);

[(ii) 3 railway corridors selected by the Secretary in accordance with subparagraphs (C) and (D);

[(iii) a Gulf Coast high speed railway corridor (as designated by the Secretary);

[(iv) a Keystone high speed railway corridor from Philadelphia to Harrisburg, Pennsylvania; and

[(v) an Empire State railway corridor from New York City to Albany to Buffalo, New York.

[(C) REQUIRED INCLUSION OF HIGH SPEED RAIL LINES.—A corridor selected by the Secretary under subparagraph (B) shall include rail lines where railroad speeds of 90 miles or more per hour are occurring or can reasonably be expected to occur in the future.

[(D) CONSIDERATIONS IN CORRIDOR SELECTION.—In selecting corridors under subparagraph (B), the Secretary shall consider—

[(i) projected rail ridership volume in each corridor;

[(ii) the percentage of each corridor over which a train will be capable of operating at its maximum cruise speed taking into account such factors as topography and other traffic on the line;

[(iii) projected benefits to nonriders such as congestion relief on other modes of transportation serving each corridor (including congestion in heavily traveled air passenger corridors);

[(iv) the amount of State and local financial support that can reasonably be anticipated for the improvement of the line and related facilities; and

[(v) the cooperation of the owner of the right-of-way that can reasonably be expected in the operation of high speed rail passenger service in each corridor.

[(E) CERTAIN IMPROVEMENTS.—Of such set-aside, not less than \$250,000 for fiscal year 2005, \$1,000,000 for fiscal year 2006, \$1,750,000 for fiscal year 2007, \$2,250,000 for fiscal year 2008, and \$3,000,000 for fiscal year 2009 shall be available for eligible improvements to the Minneapolis/St. Paul-Chicago segment of the Midwest High Speed Rail Corridor.

[(F) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$15,000,000 for each of fiscal years 1999 through 2003 to carry out this subsection.

[(e) CERTIFICATION OF APPORTIONMENTS.—

[(1) IN GENERAL.—On October 1 of each fiscal year, the Secretary shall certify to each of the State transportation departments the sums which he has apportioned hereunder to each State for such fiscal year. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized, except that in the case of the Interstate System the Secretary shall advise each State ninety days prior to the apportionment of such funds.

[(2) NOTICE TO STATES.—If the Secretary has not made an apportionment under section 104, 105, or 144 by the 21st day of a fiscal year beginning after September 30, 1998, the Secretary shall transmit, by such 21st day, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a written statement of the reason for not making such apportionment in a timely manner.

[(f) METROPOLITAN PLANNING.—

[(1) SET-ASIDE.—On October 1 of each fiscal year, the Secretary shall set aside 1.25 percent of the funds authorized to be appropriated for the Interstate maintenance, national highway system, surface transportation, congestion mitigation and air quality improvement, and highway bridge programs authorized under this title to carry out the requirements of section 134.

[(2) APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.—These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census,

except that no State shall receive less than one-half percent of the amount apportioned.

**[(3) USE OF FUNDS.—**

**[(A) IN GENERAL.—**The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas.

**[(B) UNUSED FUNDS.—**Any funds that are not used to carry out section 134 may be made available by a metropolitan planning organization to the State to fund activities under section 135.

**[(4) DISTRIBUTION OF FUNDS WITHIN STATES.—**

**[(A) IN GENERAL.—**The distribution within any State of the planning funds made available to agencies under paragraph (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider but not necessarily be limited to, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 134 and other applicable requirements of Federal law.

**[(B) REIMBURSEMENT.—**Not later than 30 days after the date of receipt by a State of a request for reimbursement of expenditures made by a metropolitan planning organization for carrying out section 134, the State shall reimburse, from funds distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.

**[(5) DETERMINATION OF POPULATION FIGURES.—**For the purposes of determining population figures under this subsection, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

**[(g) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130 and 144 may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State transportation department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State transportation department, and is approved by the Secretary as being in the public interest, if he has received satisfactory assurances from such State transportation department that the purposes of the program from which such funds are to be transferred have been met. A State may transfer not to exceed 50 percent of the State's apportionment under section 144 in any fiscal year to the apportionment of such State under subsection (b)(1) or subsection**

(b)(3) of this section. Any transfer to subsection (b)(3) shall not be subject to section 133(d). Nothing in this subsection authorizes the transfer of any amount apportioned from the Highway Trust Fund to any apportionment the funds for which were not from the Highway Trust Fund, and nothing in this subsection authorizes the transfer of any amount apportioned from funds not from the Highway Trust Fund to any apportionment the funds for which were from the Highway Trust Fund.

**[(h) RECREATIONAL TRAILS PROGRAM.—**

**[(1) ADMINISTRATIVE COSTS.—**Before apportioning sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct for administrative, research, technical assistance, and training expenses for such program \$840,000 for each of fiscal years 2005 through 2009. The Secretary may enter into contracts with for-profit organizations or contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or nonprofit organizations to perform these tasks.

**[(2) APPORTIONMENT TO THE STATES.—**The Secretary shall apportion the sums authorized to be appropriated for expenditure on the recreational trails program for each fiscal year, among the States in the following manner:

**[(A) 50 percent of that amount shall be apportioned equally among eligible States.**

**[(B) 50 percent of that amount shall be apportioned among eligible States in amounts proportionate to the degree of non-highway recreational fuel use in each of those States during the preceding year.**

**[(3) ELIGIBLE STATE DEFINED.—**In this section, the term “eligible State” means a State that meets the requirements of section 206(c).

**[(i) AUDITS OF HIGHWAY TRUST FUND.—**From administrative funds made available under subsection (a), the Secretary may reimburse the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.

**[(j) REPORT TO CONGRESS.—**The Secretary shall submit to Congress a report, and also make such report available to the public in a user-friendly format via the Internet, for each fiscal year on—

**[(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;**

**[(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section and sections 105 and 144;**

**[(3) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year; and**

**[(4) the rates of obligation of funds apportioned or set aside under this section and sections 105, 133, and 144, according to—**

**[(A) program;**

**[(B) funding category or subcategory;**

[(C) type of improvement;

[(D) State; and

[(E) sub-State geographic area, including urbanized and rural areas, on the basis of the population of each such area.

**[(k) TRANSFER OF HIGHWAY AND TRANSIT FUNDS.—**

**[(1) TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.—**

[(A) IN GENERAL.—Subject to subparagraph (B), funds made available for transit projects or transportation planning under this title may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

[(B) NON-FEDERAL SHARE.—The provisions of this title relating to the non-Federal share shall apply to the funds transferred under subparagraph (A).

**[(2) TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.—**

[(A) IN GENERAL.—Subject to subparagraph (B), funds made available for highway projects or transportation planning under chapter 53 of title 49 may be transferred to and administered by the Secretary in accordance with this title.

[(B) NON-FEDERAL SHARE.—The provisions of chapter 53 of title 49 relating to the non-Federal share shall apply to funds transferred under subparagraph (A).

**[(3) TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.—**

[(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary may, at the request of a State, transfer funds apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding one or more projects that are eligible for assistance with funds so apportioned or allocated.

[(B) APPORTIONMENT.—The transfer shall have no effect on any apportionment of funds to a State under this section or section 105 or 144.

[(C) SURFACE TRANSPORTATION PROGRAM.—Funds that are apportioned or allocated to a State under subsection (b)(3) and attributed to an urbanized area of a State with a population of over 200,000 individuals under section 133(d)(3) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

[(4) TRANSFER OF OBLIGATION AUTHORITY.—Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for the projects that are transferred under this subsection.

[(l) EFFECT OF CERTAIN DELAY IN DEPOSITS INTO HIGHWAY TRUST FUND.—Notwithstanding any other provision of law, deposits into the Highway Trust Fund resulting from the application of section 901(e) of the Taxpayer Relief Act of 1997 (111 Stat. 872) shall not be taken into account in determining the apportionments

and allocations that any State shall be entitled to receive under the Transportation Equity Act for the 21st Century and this title.

**[§ 105. Equity bonus program**

**[(a) PROGRAM.—**

**[(1) IN GENERAL.—**Subject to subsections (c) and (d), for each of fiscal years 2005 through 2009, the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a percentage of the total apportionments for the fiscal year for the programs specified in paragraph (2) that is less than the percentage calculated under subsection (b).

**[(2) SPECIFIC PROGRAMS.—**The programs referred to in subsection (a) are—

**[(A)** the Interstate maintenance program under section 119;

**[(B)** the national highway system program under section 103;

**[(C)** the highway bridge program under section 144;

**[(D)** the surface transportation program under section 133;

**[(E)** the highway safety improvement program under section 148;

**[(F)** the congestion mitigation and air quality improvement program under section 149;

**[(G)** metropolitan planning programs under section 104(f);

**[(H)** the high priority projects program under section 117;

**[(I)** the equity bonus program under this section;

**[(J)** the Appalachian development highway system program under subtitle IV of title 40;

**[(K)** the recreational trails program under section 206;

**[(L)** the safe routes to school program under section 1404 of the SAFETEA-LU;

**[(M)** the rail-highway grade crossing program under section 130; and

**[(N)** the coordinated border infrastructure program under section 1303 of the SAFETEA-LU.

**[(b) STATE PERCENTAGE.—**

**[(1) IN GENERAL.—**The percentage referred to in subsection (a) for each State shall be—

**[(A)** for each of fiscal years 2005 and 2006, 90.5 percent, for fiscal year 2007, 91.5 percent, and for each of fiscal years 2008 and 2009, 92 percent, of the quotient obtained by dividing—

**[(i)** the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund (other than the Mass Transit Account) in the most recent fiscal year for which data are available; by

**[(ii)** the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Mass Transit Account) for the fiscal year; or (B) for a State with a total popu-

lation density of less than 40 persons per square mile (as reported in the decennial census conducted by the Federal Government in 2000) and of which at least 1.25 percent of the total acreage is under Federal jurisdiction, based on the report of the General Services Administration entitled "Federal Real Property Profile" and dated September 30, 2004, a State with a total population of less than 1,000,000 (as reported in that decennial census), a State with a median household income of less than \$35,000 (as reported in that decennial census), a State with a fatality rate during 2002 on Interstate highways that is greater than one fatality for each 100,000,000 vehicle miles traveled on Interstate highways, or a State with an indexed, State motor fuels excise tax rate higher than 150 percent of the Federal motor fuels excise tax rate as of the date of enactment of the SAFETEA-LU, the greater of—

[(i) the applicable percentage under subparagraph (A); or

[(ii) the average percentage of the State's share of total apportionments for the period of fiscal years 1998 through 2003 for the programs specified in paragraph (2).

[(2) SPECIFIC PROGRAMS.—The programs referred to in paragraph (1)(B)(ii) are (as in effect on the day before the date of enactment of the SAFETEA-LU)—

[(A) the Interstate maintenance program under section 119;

[(B) the national highway system program under section 103;

[(C) the highway bridge program under section 144;

[(D) the surface transportation program under section 133;

[(E) the recreational trails program under section 206;

[(F) the high priority projects program under section 117;

[(G) the minimum guarantee provided under this section;

[(H) revenue aligned budget authority amounts provided under section 110;

[(I) the congestion mitigation and air quality improvement program under section 149;

[(J) the Appalachian development highway system program under subtitle IV of title 40; and

[(K) metropolitan planning programs under section 104(f).

[(c) SPECIAL RULES.—

[(1) MINIMUM COMBINED ALLOCATION.—For each fiscal year, before making the allocations under subsection (a)(1), the Secretary shall allocate among the States amounts sufficient to ensure that no State receives a combined total of amounts allocated under subsection (a)(1), apportionments for the programs specified in subsection (a)(2), and amounts allocated under this subsection, that is less than the following percentages of the



average for fiscal years 1998 through 2003 of the annual apportionments for the State for all programs specified in subsection (b)(2):

- [(A) For fiscal year 2005, 117 percent.
- [(B) For fiscal year 2006, 118 percent.
- [(C) For fiscal year 2007, 119 percent.
- [(D) For fiscal year 2008, 120 percent.
- [(E) For fiscal year 2009, 121 percent.

[(2) NO NEGATIVE ADJUSTMENT.—No negative adjustment shall be made under subsection (a)(1) to the apportionment of any State.

[(d) TREATMENT OF FUNDS.—

[(1) PROGRAMMATIC DISTRIBUTION.—The Secretary shall apportion the amounts made available under this section that exceed \$2,639,000,000 so that the amount apportioned to each State under this paragraph for each program referred to in subparagraphs (A) through (F) of subsection (a)(2) is equal to the amount determined by multiplying the amount to be apportioned under this paragraph by the ratio that—

[(A) the amount of funds apportioned to each State for each program referred to in subparagraphs (A) through (F) of subsection (a)(2) for a fiscal year; bears to

[(B) the total amount of funds apportioned to such State for all such programs for such fiscal year.

[(2) REMAINING DISTRIBUTION.—The Secretary shall administer the remainder of funds made available under this section to the States in accordance with section 104(b)(3), except that paragraphs (1) through (3) of section 133(d) shall not apply to amounts administered pursuant to this paragraph.

[(e) METRO PLANNING SET ASIDE.—Notwithstanding section 104(f), no set aside provided for under that section shall apply to funds allocated under this section.

[(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as are necessary to carry out this section for each of fiscal years 2005 through 2009.]

#### **§ 104. Apportionment**

(a) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Alternative Transportation Account) to be made available to the Secretary for administrative expenses of the Federal Highway Administration \$400,000,000 for each of fiscal years 2013 through 2016.

(2) PURPOSES.—The funds made available under paragraph (1) shall be used—

(A) to administer the provisions of law to be financed from appropriations for the Federal-aid highway program and programs authorized under chapter 2; and

(B) to make transfers of such sums as the Secretary determines to be appropriate to the Appalachian Regional Commission for administrative activities associated with the Appalachian development highway system.

(3) *AVAILABILITY.*—Funds made available under paragraph

(1) shall remain available until expended.

(b) *APPORTIONMENTS.*—On October 1 of each fiscal year, the Secretary, after making the set-asides authorized by subsection (f), subsections (b) and (c) of section 140, and section 130(e), shall apportion the remainder of the sums authorized to be appropriated for expenditure on the National Highway System program, the congestion mitigation and air quality improvement program, the surface transportation program, and the highway safety improvement program among the several States in the following manner:

(1) *NATIONAL HIGHWAY SYSTEM PROGRAM.*—

(A) *IN GENERAL.*—For the National Highway System program, in accordance with the following formula:

(i) 15 percent of the apportionments in the ratio that—

(I) the total lane miles of principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total lane miles of principal arterial routes (excluding Interstate System routes) in all States.

(ii) 15 percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in each State; bears to

(II) the total vehicle miles traveled on lanes on principal arterial routes (excluding Interstate System routes) in all States.

(iii) 5 percent of the apportionments in the ratio that—

(I) the quotient obtained by dividing the total lane miles on principal arterial highways in each State by the total population of the State; bears to

(II) the quotient obtained by dividing the total lane miles on principal arterial highways in all States by the total population of all States.

(iv) 15 percent of the apportionments in the ratio that—

(I) the total lane miles on Interstate System routes open to traffic in each State; bears to

(II) the total lane miles on Interstate System routes open to traffic in all States.

(v) 15 percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on Interstate System routes open to traffic in each State; bears to

(II) the total vehicle miles traveled on Interstate System routes open to traffic in all States.

(vi) 35 percent of the apportionments in the ratio that—

(I) the total of the annual contributions to the Highway Trust Fund (other than the Alternative

Transportation Account) attributable to commercial vehicles in each State; bears to

(II) the total of the annual contributions to the Highway Trust Fund (other than the Alternative Transportation Account) attributable to commercial vehicles in all States.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), each State shall receive a minimum of 1/2 of 1 percent of the funds apportioned for a fiscal year under this paragraph.

(2) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM.—

(A) IN GENERAL.—For the congestion mitigation and air quality improvement program, in the ratio that—

(i) the total of all weighted nonattainment and maintenance area populations in each State; bears to

(ii) the total of all weighted nonattainment and maintenance area populations in all States.

(B) CALCULATION OF WEIGHTED NONATTAINMENT AND MAINTENANCE AREA POPULATION.—Subject to subparagraph (C), for the purpose of subparagraph (A), the weighted nonattainment and maintenance area population shall be calculated by multiplying the population of each area in a State that was a nonattainment area or maintenance area as described in section 149(b) for ozone or carbon monoxide by a factor of—

(i) 1.0 if, at the time of the apportionment, the area is a maintenance area;

(ii) 1.0 if, at the time of the apportionment, the area is classified as a marginal ozone nonattainment area under subpart 2 of part D of title I of the Clean Air Act (42 U.S.C. 7511 et seq.);

(iii) 1.1 if, at the time of the apportionment, the area is classified as a moderate ozone nonattainment area under such subpart;

(iv) 1.2 if, at the time of the apportionment, the area is classified as a serious ozone nonattainment area under such subpart;

(v) 1.3 if, at the time of the apportionment, the area is classified as a severe ozone nonattainment area under such subpart;

(vi) 1.4 if, at the time of the apportionment, the area is classified as an extreme ozone nonattainment area under such subpart;

(vii) 1.0 if, at the time of the apportionment, the area is not a nonattainment or maintenance area as described in section 149(b) for ozone, but is classified under subpart 3 of part D of title I of such Act (42 U.S.C. 7512 et seq.) as a nonattainment area described in section 149(b) for carbon monoxide; or

(viii) 1.0 if, at the time of the apportionment, an area is designated as nonattainment for ozone under subpart 1 of part D of title I of such Act (42 U.S.C. 7501 et seq.).

(C) *ADDITIONAL ADJUSTMENT FOR CARBON MONOXIDE AREAS.*—If, in addition to being designated as a nonattainment or maintenance area for ozone as described in section 149(b), any county within the area was also classified under subpart 3 of part D of title I of the Clean Air Act (42 U.S.C. 7512 et seq.) as a nonattainment or maintenance area described in section 149(b) for carbon monoxide, the weighted nonattainment or maintenance area population of the county, as determined under clauses (i) through (vi) or clause (viii) of subparagraph (B), shall be further multiplied by a factor of 1.2.

(D) *MINIMUM APPORTIONMENT.*—Notwithstanding any other provision of this paragraph, each State shall receive a minimum of  $1/2$  of 1 percent of the funds apportioned for a fiscal year under this paragraph.

(E) *DETERMINATIONS OF POPULATION.*—In determining population figures for the purposes of this paragraph, the Secretary shall use the latest available annual estimates prepared by the Secretary of Commerce.

(3) *SURFACE TRANSPORTATION PROGRAM.*—

(A) *IN GENERAL.*—For the surface transportation program, in accordance with the following formula:

(i) 15 percent of the apportionments in the ratio that—

(I) the total lane miles of Federal-aid highways in each State; bears to

(II) the total lane miles of Federal-aid highways in all States.

(ii) 25 percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

(iii) 25 percent of the apportionments in the ratio that—

(I) the estimated tax payments attributable to highway users in each State paid into the Highway Trust Fund (other than the Alternative Transportation Account) in the latest fiscal year for which data are available; bears to

(II) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund (other than the Alternative Transportation Account) in the latest fiscal year for which data are available.

(iv) 35 percent of the apportionments in the ratio that—

(I) the bridge replacement and rehabilitation costs in each State (as determined under subsection (c)(4)); bears to

(II) the bridge replacement and rehabilitation costs in all States (as determined under subsection (c)(5)).

(B) *MINIMUM APPORTIONMENT.*—Notwithstanding subparagraph (A), each State shall receive a minimum of  $\frac{1}{2}$  of 1 percent of the funds apportioned for a fiscal year under this paragraph.

[(4) *Reserved.*]

(5) *HIGHWAY SAFETY IMPROVEMENT PROGRAM.*—

(A) *IN GENERAL.*—For the highway safety improvement program, in accordance with the following formula:

(i)  $33\frac{1}{3}$  percent of the apportionments in the ratio that—

(I) the total lane miles of Federal-aid highways in each State; bears to

(II) the total lane miles of Federal-aid highways in all States.

(ii)  $33\frac{1}{3}$  percent of the apportionments in the ratio that—

(I) the total vehicle miles traveled on lanes on Federal-aid highways in each State; bears to

(II) the total vehicle miles traveled on lanes on Federal-aid highways in all States.

(iii)  $33\frac{1}{3}$  percent of the apportionments in the ratio that—

(I) the number of fatalities on Federal-aid highways in each State in the latest fiscal year for which data are available; bears to

(II) the number of fatalities on Federal-aid highways in all States in the latest fiscal year for which data are available.

(B) *MINIMUM APPORTIONMENT.*—Notwithstanding subparagraph (A), each State shall receive a minimum of  $\frac{1}{2}$  of 1 percent of the funds apportioned for a fiscal year under this paragraph.

(c) *BRIDGE CALCULATION.*—For each fiscal year, the Secretary shall determine the bridge replacement and rehabilitation costs as follows:

(1) The Secretary shall identify deficient highway bridges in each State.

(2) The Secretary shall place each deficient highway bridge into one of the following categories:

(A) Federal-aid highway bridges eligible for replacement.

(B) Federal-aid highway bridges eligible for rehabilitation.

(C) Bridges not on Federal-aid highways eligible for replacement.

(D) Bridges not on Federal-aid highways eligible for rehabilitation.

(3) The Secretary shall determine—

(A) the deck area of deficient highway bridges in each category described in paragraph (2); and

(B) the respective unit price of such deck area on a State-by-State basis.

(4) The Secretary shall determine the bridge replacement and rehabilitation costs for each State by multiplying the deck

area of deficient bridges in the State by the respective unit price.

(5) The Secretary shall determine the bridge replacement and rehabilitation costs for all States by multiplying the deck area of deficient bridges in all States by the respective unit price.

(d) CERTIFICATION OF APPORTIONMENTS.—

(1) *IN GENERAL.*—On October 1 of each fiscal year, the Secretary shall certify to each of the State transportation departments the sums which the Secretary has apportioned under this section to each State for such fiscal year. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than 90 days before the beginning of the fiscal year for which the sums to be apportioned are authorized.

(2) *NOTICE TO STATES.*—If the Secretary has not made an apportionment under this section or section 105 by the 21st day of a fiscal year beginning after September 30, 2012, the Secretary shall transmit, by such 21st day, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a written statement of the reason for not making such apportionment in a timely manner.

(e) *AUDITS OF HIGHWAY TRUST FUND.*—From administrative funds made available under subsection (a), the Secretary may reimburse the Office of Inspector General of the Department of Transportation for the conduct of annual audits of financial statements in accordance with section 3521 of title 31.

(f) METROPOLITAN PLANNING.—

(1) *SET ASIDE.*—On October 1 of each fiscal year, the Secretary shall set aside 1.15 percent of the funds authorized to be appropriated for the National Highway System program and surface transportation program authorized under this title to carry out the requirements of section 5203 of title 49.

(2) *APPORTIONMENT TO STATES OF SET-ASIDE FUNDS.*—Funds set aside under paragraph (1) shall be apportioned to the States in the ratio which the population in urbanized areas, or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than  $\frac{1}{2}$  of 1 percent of the amount apportioned.

(3) *USE OF FUNDS.*—

(A) *IN GENERAL.*—The funds apportioned to any State under paragraph (2) shall be made available by the State to the metropolitan planning organizations responsible for carrying out the provisions of section 5203 of title 49, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas.

(B) *UNUSED FUNDS.*—Any funds that are not used to carry out section 5203 of title 49 may be made available by

a metropolitan planning organization to the State to fund activities under section 5204 of such title.

(4) *DISTRIBUTION OF FUNDS WITHIN STATES.*—

(A) *IN GENERAL.*—The distribution within any State of the planning funds made available to agencies under paragraph (3) shall be in accordance with a formula developed by each State and approved by the Secretary that shall consider, but not necessarily be limited to, population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of section 5203 of title 49 and other applicable requirements of Federal law.

(B) *REIMBURSEMENT.*—Not later than 30 days after the date of receipt by a State of a request for reimbursement of expenditures made by a metropolitan planning organization for carrying out section 5203 of title 49, the State shall reimburse, from funds distributed under this paragraph to the metropolitan planning organization by the State, the metropolitan planning organization for those expenditures.

(5) *DETERMINATION OF POPULATION FIGURES.*—For the purposes of determining population figures under this subsection, the Secretary shall use the most recent estimate published by the Secretary of Commerce.

(g) *REPORT TO CONGRESS.*—For each fiscal year, the Secretary shall submit to Congress, and also make available to the public in a user-friendly format via the Internet, a report on—

(1) the amount obligated, by each State, for Federal-aid highways and highway safety construction programs during the preceding fiscal year;

(2) the balance, as of the last day of the preceding fiscal year, of the unobligated apportionment of each State by fiscal year under this section and section 105;

(3) the balance of unobligated sums available for expenditure at the discretion of the Secretary for such highways and programs for the fiscal year; and

(4) the rates of obligation of funds apportioned or set aside under this section and sections 105 and 133, according to—

(A) program;

(B) funding category or subcategory;

(C) type of improvement;

(D) State; and

(E) sub-State geographic area, including urbanized and rural areas, on the basis of the population of each such area.

(h) *TRANSFER OF HIGHWAY AND TRANSIT FUNDS.*—

(1) *TRANSFER OF HIGHWAY FUNDS FOR TRANSIT PROJECTS.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), funds made available under this title for transit projects or transportation planning may be transferred to and administered by the Secretary in accordance with chapter 53 of title 49.

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(B) *NON-FEDERAL SHARE.*—The provisions of this title relating to the non-Federal share shall apply to the funds transferred under subparagraph (A).

(2) *TRANSFER OF TRANSIT FUNDS FOR HIGHWAY PROJECTS.*—

(A) *IN GENERAL.*—Subject to subparagraph (B), funds made available under chapter 53 of title 49 for highway projects or transportation planning may be transferred to and administered by the Secretary in accordance with this title.

(B) *NON-FEDERAL SHARE.*—The provisions of chapter 53 of title 49 relating to the non-Federal share shall apply to funds transferred under subparagraph (A).

(3) *TRANSFER OF FUNDS AMONG STATES OR TO FEDERAL HIGHWAY ADMINISTRATION.*—

(A) *IN GENERAL.*—Subject to subparagraphs (B) and (C), the Secretary, at the request of a State, may transfer funds apportioned or allocated under this title to the State to another State, or to the Federal Highway Administration, for the purpose of funding one or more projects that are eligible for assistance with funds so apportioned or allocated.

(B) *APPORTIONMENT.*—A transfer under subparagraph (A) shall have no effect on any apportionment of funds to a State under this section or section 105.

(C) *SURFACE TRANSPORTATION PROGRAM.*—Funds that are apportioned or allocated to a State under subsection (b)(3) and attributed to an urbanized area of a State with a population of over 200,000 individuals under section 133(d)(3) may be transferred under this paragraph only if the metropolitan planning organization designated for the area concurs, in writing, with the transfer request.

(4) *TRANSFER OF OBLIGATION AUTHORITY.*—Obligation authority for funds transferred under this subsection shall be transferred in the same manner and amount as the funds for the projects that are transferred under this subsection.

(i) *RECREATIONAL TRAILS PROGRAM.*—

(1) *ADMINISTRATIVE COSTS.*—Before apportioning sums authorized to be appropriated to carry out the recreational trails program under section 206, the Secretary shall deduct for administrative, research, technical assistance, and training expenses for such program \$840,000 for each fiscal year. The Secretary may enter into contracts with for-profit organizations or contracts, partnerships, or cooperative agreements with other government agencies, institutions of higher learning, or non-profit organizations to perform these tasks.

(2) *APPORTIONMENT TO THE STATES.*—The Secretary shall apportion the sums authorized to be appropriated for expenditure on the recreational trails program for each fiscal year among eligible States in the following manner:

(A) 50 percent equally among eligible States.

(B) 50 percent in amounts proportionate to the degree of non-highway recreational fuel use in each eligible State during the preceding year.



(3) **ELIGIBLE STATE DEFINED.**—In this subsection, the term “eligible State” means a State that meets the requirements of section 206(c).

**§ 105. Equity bonus program**

(a) **PROGRAM.**—

(1) **IN GENERAL.**—Subject to subsections (c), (d), and (e), for fiscal year 2013 and each fiscal year thereafter, the Secretary shall apportion among the States amounts sufficient to ensure that no State receives a percentage of the total apportionments for the fiscal year for the programs specified in paragraph (2) that is less than the percentage calculated under subsection (b).

(2) **SPECIFIED PROGRAMS.**—The programs referred to in paragraph (1) are—

(A) the metropolitan planning programs under section 104(f);

(B) the equity bonus program under this section;

(C) the National Highway System program under section 119;

(D) the rail-highway grade crossing program under section 130;

(E) the surface transportation program under section 133;

(F) the highway safety improvement program under section 148;

(G) the recreational trails programs under section 206;

(H) the State infrastructure bank capitalization program under section 611; and

(I) the Appalachian development highway system program under section 14501 of title 40.

(b) **STATE PERCENTAGE.**—For each of fiscal years 2013 through 2016, the percentage referred to in subsection (a) for each State shall be 94 percent of the quotient obtained by dividing—

(1) the estimated tax payments attributable to highway users in the State paid into the Highway Trust Fund in the most recent fiscal year for which data are available; by

(2) the estimated tax payments attributable to highway users in all States paid into the Highway Trust Fund for the fiscal year.

(c) **MINIMUM AMOUNT.**—

(1) **IN GENERAL.**—For each fiscal year, before making the apportionments under subsection (a)(1), the Secretary shall apportion among the States amounts sufficient to ensure that each State receives a combined total apportionment for the programs specified in subsection (a)(2) and the congestion mitigation and air quality improvement program under section 149 that equals or exceeds the combined amount that the State was apportioned for fiscal year 2012 for the programs specified in section 105(a)(2) of this title (other than the high priority projects program under subparagraph (H) of such section), as in effect on the day before the date of enactment of the American Energy and Infrastructure Jobs Act of 2012.

(2) **SPECIAL RULE.**—In determining a State’s combined apportionment for fiscal year 2012 for purposes of paragraph (1),

*the Secretary shall not consider amounts apportioned to the State for such fiscal year under the following:*

*(A) Section 111(d)(1) of the Surface Transportation Extension Act of 2011, Part II (Public Law 112-30; 125 Stat. 344).*

*(B) Section 111(d)(3) of the Surface Transportation Extension Act of 2011, Part II (Public Law 112-30; 125 Stat. 345).*

*(d) NO NEGATIVE ADJUSTMENT.—No negative adjustment shall be made under subsection (a)(1) to the apportionment of any State.*

*(e) TREATMENT OF FUNDS.—*

*(1) PROGRAMMATIC DISTRIBUTION.—The Secretary shall apportion the amounts made available under this section that exceed \$2,639,000,000 so that the amount apportioned to each State under this section for each program referred to in subparagraphs (C) and (E) of subsection (a)(2) is equal to the amount determined by multiplying the amount to be apportioned to such State under this section by the ratio that—*

*(A) the amount of funds apportioned to such State for each program referred to in subparagraphs (C) and (E) of subsection (a)(2) for a fiscal year; bears to*

*(B) the total amount of funds apportioned to such State for all such programs for such fiscal year.*

*(2) REMAINING DISTRIBUTION.—The Secretary shall administer the remainder of funds made available under this section to the States in accordance with section 133, except that section 133(d)(3) and section 1115(a) of the American Energy and Infrastructure Jobs Act of 2012 shall not apply to the amounts administered pursuant to this paragraph.*

*(f) METROPOLITAN PLANNING SET-ASIDE.—Notwithstanding section 104(f), no set aside provided for under that section shall apply to funds allocated under this section.*

*(g) AUTHORIZATION OF APPROPRIATIONS.—*

*(1) IN GENERAL.—Subject to paragraphs (2) and (3), there is authorized to be appropriated from the Highway Trust Fund (other than the Alternative Transportation Account) to carry out this section \$3,900,000,000 for each of fiscal years 2013 through 2016.*

*(2) UPWARD ADJUSTMENT.—If the amount authorized by paragraph (1) for a fiscal year is less than the minimum amount required to ensure that each State receives the minimum percentage of total apportionments required under subsection (a)(1) and the minimum amount required under subsection (c)(1) for the fiscal year—*

*(A) the amount authorized by paragraph (1) for the fiscal year shall be increased by the amount of the shortfall, so as to equal such minimum amount; and*

*(B) the amounts authorized by section 1101(a)(2) of the American Energy and Infrastructure Jobs Act of 2012 for the surface transportation program for the fiscal year shall be decreased by the amount of the shortfall.*

*(3) DOWNWARD ADJUSTMENT.—If the amount authorized by paragraph (1) for a fiscal year is more than the minimum amount required to ensure that each State receives the min-*

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imum percentage of total apportionments required under subsection (a)(1) and the minimum amount required under subsection (c)(1) for the fiscal year—

(A) the amount authorized by paragraph (1) for the fiscal year shall be decreased by the amount of the excess, so as to equal such minimum amount; and

(B) the amounts authorized by section 1101(a)(1) of the American Energy and Infrastructure Jobs Act of 2012 for the National Highway System program for the fiscal year shall be increased by the amount of the excess.

**§ 106. Project approval and oversight**

(a) \* \* \*

\* \* \* \* \*

(c) ASSUMPTION BY STATES OF RESPONSIBILITIES OF THE SECRETARY.—

[(1) NON-INTERSTATE NHS PROJECTS.—For projects under this title that are on the National Highway System but not on the Interstate System, the State may assume the responsibilities of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections of projects unless the State or the Secretary determines that such assumption is not appropriate.]

(1) NHS PROJECTS.—For projects under this title that are on the National Highway System, including projects on the Interstate System, the State may assume the responsibility of the Secretary under this title for design, plans, specifications, estimates, contract awards, and inspections with respect to such projects unless the Secretary determines that such assumption is not appropriate.

\* \* \* \* \*

(e) VALUE ENGINEERING ANALYSIS.—

(1) \* \* \*

(2) ANALYSIS.—The State shall provide a value engineering analysis or other cost-reduction analysis for—

(A) each project on the [Federal-aid system] National Highway System receiving Federal assistance with an estimated total cost of [\$25,000,000] \$50,000,000 or more;

(B) a bridge project on the National Highway System receiving Federal assistance with an estimated total cost of [\$20,000,000] \$40,000,000 or more; and

\* \* \* \* \*

(5) DESIGN-BUILD PROJECTS.—A requirement to provide a value engineering analysis under this subsection does not apply to a project delivered using the design-build method of construction.

\* \* \* \* \*

(h) MAJOR PROJECTS.—

(1) \* \* \*

\* \* \* \* \*

(3) FINANCIAL PLAN.—A financial plan shall—

(A) be based on detailed estimates of the cost to complete the project; [and]

(B) provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project[.]; and

(C) assess the appropriateness of a public-private partnership to deliver the project.

\* \* \* \* \*

(j) *USE OF ADVANCED MODELING TECHNOLOGIES.*—

(1) *IN GENERAL.*—With respect to transportation projects that receive Federal funding, the Secretary shall encourage the use of advanced modeling technologies during environmental, planning, financial management, design, simulation, and construction processes related to the projects.

(2) *ACTIVITIES.*—In carrying out paragraph (1), the Secretary shall—

(A) compile information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies;

(B) disseminate to States information relating to advanced modeling technologies, including industry best practices with respect to the use of the technologies; and

(C) promote the use of advanced modeling technologies.

(3) *COMPREHENSIVE PLAN.*—The Secretary shall develop and publish on the Internet Web site of the Department of Transportation a detailed and comprehensive plan for the implementation of paragraph (1).

(4) *ADVANCED MODELING TECHNOLOGY DEFINED.*—The term “advanced modeling technology” means an available or developing technology, including 3-dimensional digital modeling, that can accelerate and improve the environmental review process, increase effective public participation, enhance the detail and accuracy of project designs, increase safety, accelerate construction and reduce construction costs, or otherwise expedite project delivery with respect to transportation projects that receive Federal funding.

\* \* \* \* \*

**§ 108. Advance acquisition of real property**

(a) *IN GENERAL.*—

(1) *AVAILABILITY OF FUNDS.*—For the purpose of facilitating the timely and economical acquisition of [real property] *real property interests* for a transportation improvement eligible for funding under this title, the Secretary, upon the request of a State, may make available, for the acquisition of [real property] *real property interests*, such funds apportioned to the State as may be expended on the transportation improvement, under such rules and regulations as the Secretary may issue.

(2) *CONSTRUCTION.*—The agreement between the Secretary and the State for the reimbursement of the cost of the [real property] *real property interests* shall provide for the actual construction of the transportation improvement within a period

not to exceed 20 years following the fiscal year for which the request is made, unless the Secretary determines that a longer period is reasonable.

(b) Federal participation in the cost of [rights-of-way] *real property interests* acquired under subsection (a) of this section shall not exceed the Federal pro rata share applicable to the class of funds from which Federal reimbursement is made.

(c) [EARLY ACQUISITION OF RIGHTS-OF-WAY] *STATE-FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.*—

(1) *IN GENERAL.*—A State may carry out, at the expense of the State, acquisitions of interests in real property for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project by the State or any Federal agency.

[(1) GENERAL RULE.—Subject to paragraph (2)]

(2) *ELIGIBILITY FOR REIMBURSEMENT.*—Subject to paragraph (3), funds apportioned to a State under this title may be used to participate in the payment of—

(A) costs incurred by the State for acquisition of [rights-of-way] *real property interests*, acquired in advance of any Federal approval or authorization, if the [rights-of-way] *real property interests* are subsequently incorporated into a project eligible for surface transportation program funds; and

\* \* \* \* \*

[(2)] (3) *TERMS AND CONDITIONS.*—The Federal share payable of the costs described [in paragraph (1)] *in paragraph (2)* shall be eligible for reimbursement out of funds apportioned to a State under this title when the [rights-of-way] *real property interests* acquired are incorporated into a project eligible for surface transportation program funds, if the State demonstrates to the Secretary and the Secretary finds that—

(A) \* \* \*

\* \* \* \* \*

(E) the alternative for which the [right-of-way] *real property interest* is acquired is selected by the State pursuant to regulations to be issued by the Secretary which provide for the consideration of the environmental impacts of various alternatives;

(F) before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act has been completed for the project for which the [right-of-way] *real property interest* was acquired by the State, and the acquisition has been approved by the Secretary under this Act, and in compliance with section 303 of title 49, section 7 of the Endangered Species Act, and all other applicable environmental laws shall be identified by the Secretary in regulations; and

(G) before the time that the cost incurred by a State is approved for Federal participation, [both the Secretary and the Administrator of the Environmental Protection

Agency have concurred] *the Secretary has determined* that the property acquired in advance of Federal approval or authorization did not influence the environmental assessment of the project, the decision relative to the need to construct the project, or the selection of the project design or location.

**(d) FEDERALLY FUNDED EARLY ACQUISITION OF REAL PROPERTY INTERESTS.—**

(1) *IN GENERAL.*—*The Secretary may authorize the use of Federal funds for the acquisition of a real property interest by a State. For purposes of this subsection, an acquisition of a real property interest includes the acquisition of any interest in land, including the acquisition of a contractual right to acquire any interest in land, or any other similar action to acquire or preserve rights-of-way for a transportation facility.*

(2) *STATE CERTIFICATION.*—*A State requesting Federal funding for an acquisition of a real property interest shall certify in writing that—*

(A) *the State has authority to acquire the real property interest under State law;*

(B) *the acquisition of the real property interest is for a transportation purpose; and*

(C) *the State acknowledges that early acquisition will not be considered by the Secretary in the environmental assessment of a project, the decision relative to the need to construct a project, or the selection of a project design or location.*

(3) *ENVIRONMENTAL COMPLIANCE.*—*Before authorizing Federal funding for an acquisition of a real property interest, the Secretary shall complete for the acquisition the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). For purposes of the review process, the acquisition of a real property interest shall be treated as having independent utility and does not limit consideration of alternatives for future transportation improvements with respect to the real property interest.*

(4) *PROGRAMMING.*—*The acquisition of a real property interest for which Federal funding is requested shall be included as a project in an applicable transportation improvement program under sections 5203 and 5204 of title 49. The acquisition project may be included in the transportation improvement program on its own, without including the future construction project for which the real property interest is being acquired. The acquisition project may consist of the acquisition of a specific parcel, a portion of a transportation corridor, or an entire transportation corridor.*

(5) *OTHER REQUIREMENTS.*—*The acquisition of a real property interest shall be carried out in compliance with all requirements applicable to the acquisition of real property interests for federally funded transportation projects.*

(e) *CONSIDERATION OF LONG-RANGE TRANSPORTATION NEEDS.*—*The Secretary shall encourage States and other public authorities, if practicable, to acquire transportation real property interests that are sufficient to accommodate long-range transportation needs and,*

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*if possible, to do so through the acquisition of broad real property interests that have the capacity for expansion over a 50- to 100-year period and the potential to accommodate one or more transportation modes.*

**§ 109. Standards**

(a) \* \* \*

\* \* \* \* \*

(r) *PAVEMENT MARKINGS.*—The Secretary may not approve any pavement markings project that includes the use of glass beads containing more than 200 parts per million of arsenic or lead.

(s) *UNDERTAKING DESIGN ACTIVITIES BEFORE COMPLETION OF ENVIRONMENTAL REVIEW PROCESS.*—

(1) *IN GENERAL.*—A State may carry out, at the expense of the State, design activities at any level of detail for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals of the project.

(2) *ELIGIBILITY FOR REIMBURSEMENT.*—Subject to paragraph (3), funds apportioned to a State under this title may be used to participate in the payment of costs incurred by the State for design activities, if the results of the activities are subsequently incorporated (in whole or in substantial part) into a project eligible for surface transportation program funds.

(3) *TERMS AND CONDITIONS.*—The Federal share payable of the costs described in paragraph (2) shall be eligible for reimbursement out of funds apportioned to a State under this title when the design activities are incorporated (in whole or in substantial part) into a project eligible for surface transportation program funds, if the State demonstrates to the Secretary and the Secretary finds that—

(A) before the time that the cost incurred by a State is approved for Federal participation, environmental compliance pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been completed for the project for which the design activities were conducted by the State; and

(B) the design activities conducted pursuant to this subsection did not preclude the consideration of alternatives to the project.

**[§ 110. Revenue aligned budget authority**

[(a) *IN GENERAL.*—

[(1) *ALLOCATION.*—On October 15 of fiscal year 2007 and each fiscal year thereafter, the Secretary shall allocate for such fiscal year and the succeeding fiscal year an amount of funds equal to the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(B)(ii)(I) (cc)) if the amount determined pursuant to such section for such fiscal year is greater than zero.

[(2) REDUCTION.—If the amount determined pursuant to section 251(b)(1)(B)(ii)(I)(cc) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C 901(b)(2)(B)(ii)(I)(cc)) for fiscal year 2007 or any fiscal year thereafter is less than zero, the Secretary on October 15 of such fiscal year shall reduce proportionately the amount of sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for such fiscal year and the succeeding fiscal year to carry out each of the Federal-aid highway and highway safety construction programs (other than emergency relief) and the motor carrier safety grant program by an aggregate amount equal to the amount determined pursuant to such section. No reduction under this paragraph and no reduction under section 1102(h), and no reduction under title VIII or any amendment made by title VIII, of the SAFETEA-LU shall be made for a fiscal year if, as of October 1 of such fiscal year the balance in the Highway Trust Fund (other than the Mass Transit Account) exceeds \$6,000,000,000.

[(b) GENERAL DISTRIBUTION.—The Secretary shall—

[(1) determine the ratio that—

[(A) the sums authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for each of the Federal-aid highway and highway safety construction programs (other than the equity bonus program) and the motor carrier safety grant program for which funds are allocated from such Trust Fund by the Secretary under this title, SAFETEA-LU, and subchapter I of chapter 311 of title 49 for a fiscal year, bears to

[(B) the total of all sums authorized to be appropriated from such Trust Fund for such programs for such fiscal year;

[(2) multiply the ratio determined under paragraph (1) by the total amount of funds to be allocated under subsection (a)(1) for such fiscal year;

[(3) allocate the amount determined under paragraph (2) among such programs in the ratio that—

[(A) the sums authorized to be appropriated from such Trust Fund for each of such programs for such fiscal year, bears to

[(B) the sums authorized to be appropriated from such Trust Fund for all such programs for such fiscal year; and

[(4) allocate the remainder of the funds to be allocated under subsection (a)(1) for such fiscal year to the States in the ratio that—

[(A) the total of all funds authorized to be appropriated from such Trust Fund for Federal-aid highway and highway safety construction programs that are apportioned to each State for such fiscal year but for this section, bears to

[(B) the total of all funds authorized to be appropriated from such Trust Fund for such programs that are apportioned to all States for such fiscal year but for this section.



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[(c) STATE PROGRAMMATIC DISTRIBUTION.—Of the funds to be apportioned to each State under subsection (b)(4) for a fiscal year, the Secretary shall ensure that such funds are apportioned for the Interstate and National Highway System program, the bridge program, the surface transportation program, the highway safety improvement program, and the congestion mitigation air quality improvement program in the same ratio that each State is apportioned funds for such programs for such fiscal year but for this section.

[(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1998.

[(e) After making any calculation necessary to implement this section for fiscal year 2001, the amount available under paragraph (a)(1) shall be increased by \$128,752,000. The amounts added under this subsection shall not apply to any calculation in any other fiscal year.

[(f) For fiscal year 2001, prior to making any distribution under this section, \$22,029,000 of the allocation under paragraph (a)(1) shall be available only for each program authorized under chapter 53 of title 49, United States Code, and title III of Public Law 105-178, in proportion to each such program's share of the total authorization in section 5338 (other than 5338(h)) of such title and sections 3037 and 3038 of such Public Law, under the terms and conditions of chapter 53 of such title.

[(g) For fiscal year 2001, prior to making any distribution under this section, \$399,000 of the allocation under paragraph (a)(1) shall be available only for motor carrier safety programs under sections 31104 and 31107 of title 49, United States Code; \$274,000 for NHTSA operations and research under section 403 of title 23, United States Code; and \$787,000 for NHTSA highway traffic safety grants under chapter 4 of title 23, United States Code.]

#### **§ 111. Agreements relating to use of and access to rights-of-way—Interstate System**

(a) IN GENERAL.—All agreements between the Secretary and the State transportation department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. Such agreements shall also contain a clause providing that the State will not permit automotive service stations or other commercial establishments for serving motor vehicle users to be constructed or located on the rights-of-way of the Interstate System[,] *and will not change the boundary of any right-of-way on the Interstate System to accommodate construction of, or afford access to, an automotive service station or other commercial establishment.* Such agreements may, however, authorize a State or political subdivision thereof to use or permit the use of the airspace above and below the established grade line of the highway pavement for such purposes as will not impair the full use and safety of the highway, as will not

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require or permit vehicular access to such space directly from such established grade line of the highway, or otherwise interfere in any way with the free flow of traffic on the Interstate System. Nothing in this section, or in any agreement entered into under this section, shall require the discontinuance, obstruction, or removal of any establishment for serving motor vehicle users on any highway which has been, or is hereafter, designated as a highway or route on the Interstate System (1) if such establishment (A) was in existence before January 1, 1960, (B) is owned by a State, and (C) is operated through concessionaries or otherwise, and (2) if all access to, and exits from, such establishment conform to the standards established for such a highway under this title.

*(b) REST AREAS.—*

*(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary shall permit a State to acquire, construct, operate, and maintain a rest area along a highway on the Interstate System in such State.*

*(2) ELIGIBLE ACTIVITIES.—The Secretary shall permit a rest area under paragraph (1) to include commercial activities that provide goods, services, and information serving the traveling public and the commercial motor carrier industry. Such commercial activities shall be limited to—*

*(A) commercial advertising and media displays if such advertising and displays are—*

*(i) exhibited solely within any facility constructed in the rest area; and*

*(ii) not legible from the main traveled way;*

*(B) State promotional or tourism items;*

*(C) tourism-related merchandise and products, including electronics and clothing;*

*(D) historical or tourism-related entertainment items, including event or attraction tickets;*

*(E) travel-related information, including maps, travel booklets, and hotel coupon booklets;*

*(F) automatic teller machines; and*

*(G) lottery machines.*

*(3) PRIVATE OPERATORS.—A State may permit a private party to operate such commercial activities.*

*(4) LIMITATION ON USE OF REVENUES.—A State shall use any revenues received from the commercial activities in a rest area under this section to cover the costs of acquiring, constructing, operating, and maintaining rest areas in the State.*

**[(b)] (c) VENDING MACHINES.**—Notwithstanding subsection (a), any State may permit the placement of vending machines in rest and recreation areas, and in safety rest areas, constructed or located on rights-of-way of the Interstate System in such State. Such vending machines may only dispense such food, drink, and other articles as the State transportation department determines are appropriate and desirable. Such vending machines may only be operated by the State. In permitting the placement of vending machines, the State shall give priority to vending machines which are operated through the State licensing agency designated pursuant to section 2(a)(5) of the Act of June 20, 1936, commonly known as the “Randolph-Sheppard Act” (20 U.S.C. 107a(a)(5)). The costs of in-

stallation, operation, and maintenance of vending machines shall not be eligible for Federal assistance under this title.

[(c)] (d) MOTORIST CALL BOXES.—

(1) \* \* \*

\* \* \* \* \*

(e) *JUSTIFICATION REPORTS.*—If the Secretary requests or requires a justification report for a project that would add a point of access to, or exit from, the Interstate System, the Secretary may permit a State transportation department to approve such report.

§ 112. Letting of contracts

(a) \* \* \*

(b) BIDDING REQUIREMENTS.—

[(1) IN GENERAL.—Subject to paragraphs (2) and (3), construction of each project, subject to the provisions of subsection (a) of this section, shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.]

(1) IN GENERAL.—

(A) *COMPETITIVE BIDDING REQUIREMENT.*—Subject to paragraphs (2), (3), and (4), construction of each project, subject to the provisions of subsection (a), shall be performed by contract awarded by competitive bidding, unless the State transportation department demonstrates, to the satisfaction of the Secretary, that some other method is more cost effective or that an emergency exists.

(B) BASIS OF AWARD.—

(i) *IN GENERAL.*—Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility.

(ii) *PROHIBITION.*—No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

\* \* \* \* \*

(3) DESIGN-BUILD CONTRACTING.—

(A) *IN GENERAL.*—A State transportation department or local transportation agency may award a design-build contract for a qualified project described in [subparagraph

(C)] *subparagraph (B)* using any procurement process permitted by applicable State and local law.

[(B) LIMITATION ON FINAL DESIGN.—Final design under a design-build contract referred to in subparagraph (A) shall not commence before compliance with section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).]

[(C)] (B) QUALIFIED PROJECTS.—A qualified project referred to in subparagraph (A) is a project under this chapter (including intermodal projects) for which the Secretary has approved the use of design-build contracting under criteria specified in regulations issued by the Secretary.

[(D)] (C) REGULATORY PROCESS.—Not later than 90 days after the date of enactment [of the SAFETEA-LU] of the American Energy and Infrastructure Jobs Act of 2012, the Secretary shall issue revised regulations under section 1307(c) of the Transportation Equity Act for 21st Century (23 U.S.C. 112 note; 112 Stat. 230) that—

(i) \* \* \*

(ii) require that the State transportation department or local transportation agency receive concurrence from the Secretary before carrying out an activity under clause (i); [and]

(iii) preclude the design-build contractor from proceeding with [final design or] construction of any permanent improvement prior to completion of the process under such section 102[.]; and

(iv) permit the State transportation department, the local transportation agency, and the design-build contractor to proceed, at the expense of one or more of those entities, with design activities at any level of detail for a project before completion of the review process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project. Design activities carried out under this clause shall be eligible for Federal reimbursement as a project expense in accordance with the requirements under section 109(s).

[(E)] (D) DESIGN-BUILD CONTRACT DEFINED.—In this paragraph, the term “design-build contract” means an agreement that provides for design and construction of a project by a contractor, regardless of whether the agreement is in the form of a design-build contract, a franchise agreement, or any other form of contract approved by the Secretary.

(4) METHOD OF CONTRACTING.—

(A) IN GENERAL.—

(i) TWO-PHASE CONTRACT.—A contracting agency may award a two-phase contract for preconstruction and construction services.

(ii) PRE-CONSTRUCTION SERVICES PHASE.—In the pre-construction services phase, the contractor shall provide the contracting agency with advice for sched-

uling, work sequencing, cost engineering, constructability, cost estimating, and risk identification.

(iii) *AGREEMENT.*—Prior to the start of the construction services phase, the contracting agency and the contractor may agree to a price and other factors specified in regulation for the construction of the project or a portion of the project.

(iv) *CONSTRUCTION PHASE.*—If an agreement is reached under clause (iii), the contractor shall be responsible for the construction of the project or portion of the project at the negotiated price and other factors specified in regulation.

(B) *SELECTION.*—A contract shall be awarded to a contractor using a competitive selection process based on qualifications, experience, best value, or any other combination of factors considered appropriate by the contracting agency.

(C) *TIMING.*—

(i) *RELATIONSHIP TO NEPA PROCESS.*—Prior to the completion of the process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), a contracting agency may—

(I) issue requests for proposals;

(II) proceed with the award of a contract for preconstruction services under subparagraph (A); and

(III) issue notices to proceed with a preliminary design and any work related to preliminary design.

(ii) *PRECONSTRUCTION SERVICES PHASE.*—If the preconstruction services phase of a contract under subparagraph (A)(ii) focuses primarily on one alternative, the Secretary shall require that the contract include appropriate provisions to achieve the objectives of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and comply with other applicable Federal laws and regulations.

(iii) *CONSTRUCTION SERVICES PHASE.*—A contracting agency may not proceed with the award of the construction services phase of a contract under subparagraph (A)(iv) and may not proceed, or permit any consultant or contractor to proceed, with construction until completion of the process required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(iv) *APPROVAL REQUIREMENT.*—Prior to authorizing construction activities, the Secretary shall approve the contracting agency's price estimate for the entire project, as well as any price agreement with the general contractor for the project or a portion of the project.

(v) *DESIGN ACTIVITIES.*—A contracting agency may proceed, at its expense, with design activities at any level of detail for a project before completion of the re-

view process required for the project under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) without affecting subsequent approvals required for the project. Design activities carried out under this clause shall be eligible for Federal reimbursement as a project expense in accordance with the requirements under section 109(s).

\* \* \* \* \*

(h) *USE OF PATENTED OR PROPRIETARY ITEMS.*—The Secretary shall approve the use, by a State, of Federal funds made available to carry out this chapter to pay for patented or proprietary items if the State transportation department certifies, based on the documented analysis and professional judgment of qualified State transportation officials, that—

- (1) no equally suitable alternative item exists;
- (2) any specified patented or proprietary item will be clearly identified as a patented or proprietary item in bid documents; and
- (3) any specified patented or proprietary item will be available in sufficient quantity to complete any project identified in bid documents.

\* \* \* \* \*

#### § 114. Construction

(a) \* \* \*

\* \* \* \* \*

(d) *VETERANS EMPLOYMENT.*—Recipients of Federal financial assistance under this chapter shall ensure that contractors working on a highway project funded using such assistance give preference in the hiring or referral of laborers on any project for the construction of a highway to veterans, as defined in section 2108 of title 5, who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not apply to projects subject to section 140(d).

\* \* \* \* \*

#### § 116. Maintenance

(a) \* \* \*

\* \* \* \* \*

(e) *DEFINITIONS.*—In this section, the following definitions apply:

(1) *PREVENTIVE MAINTENANCE.*—The term “preventive maintenance” includes pavement preservation programs and activities.

(2) *PAVEMENT PRESERVATION PROGRAMS AND ACTIVITIES.*—The term “pavement preservation programs and activities” means programs and activities employing a network level, long-term strategy that enhances pavement performance by using an integrated, cost-effective set of practices that extend pavement life, improve safety, and meet road user expectations.

**[§ 117. High priority projects program**

**[(a) AUTHORIZATION OF HIGH PRIORITY PROJECTS.—**

**[(1) IN GENERAL.—**The Secretary is authorized to carry out high priority projects with funds made available to carry out the high priority projects program under this section.

**[(2) AVAILABILITY OF FUNDS.—**

**[(A) FOR TEA-21.—**Of amounts made available to carry out this section for fiscal years 1998 through 2003, the Secretary, subject to subsection (b), shall make available to carry out each project described in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 257) the amount listed for such project in such section.

**[(B) FOR SAFETEA-LU.—**Of amounts made available to carry out this section for fiscal years 2005 through 2009, the Secretary, subject to subsection (c), shall make available to carry out each project described in section 1702 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (119 Stat. 1256) the amount listed for such project in such section.

**[(3) AVAILABILITY OF UNALLOCATED FUNDS.—**Any amounts made available to carry out such program that are not allocated for projects described in such section shall be available to the Secretary, subject to subsection (b), to carry out such other high priority projects as the Secretary determines appropriate.

**[(b) FOR TEA-21.—**For each project to be carried out with funds made available to carry out the high priority projects program under this section for fiscal years 1998 through 2003—

**[(1)** 11 percent of such amount shall be available for obligation beginning in fiscal year 1998;

**[(2)** 15 percent of such amount shall be available for obligation beginning in fiscal year 1999;

**[(3)** 18 percent of such amount shall be available for obligation beginning in fiscal year 2000;

**[(4)** 18 percent of such amount shall be available for obligation beginning in fiscal year 2001;

**[(5)** 19 percent of such amount shall be available for obligation beginning in fiscal year 2002; and

**[(6)** 19 percent of such amount shall be available for obligation beginning in fiscal year 2003.

**[(c) FOR SAFETEA-LU.—**For each project to be carried out with funds made available to carry out the high priority projects program under this section for fiscal years 2005 through 2009—

**[(1)** 20 percent of such amount shall be available for obligation beginning in fiscal year 2005;

**[(2)** 20 percent of such amount shall be available for obligation beginning in fiscal year 2006;

**[(3)** 20 percent of such amount shall be available for obligation beginning in fiscal year 2007;

**[(4)** 20 percent of such amount shall be available for obligation beginning in fiscal year 2008; and

**[(5)** 20 percent of such amount shall be available for obligation beginning in fiscal year 2009.

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[(d) FEDERAL SHARE.—The Federal share payable on account of any project carried out with funds made available to carry out this section shall be 80 percent of the total cost thereof; except that the Federal share on account of the project to be carried out under item 1419 of the table contained in section 1602 of the Transportation Equity Act for the 21st Century (112 Stat. 309), relating to reconstruction of a road and causeway in Shiloh Military Park in Hardin County, Tennessee, shall be 100 percent of the total cost thereof.

[(e) DELEGATION TO STATES.—Subject to the provisions of this title, the Secretary shall delegate responsibility for carrying out a project or projects, with funds made available to carry out this section, to the State in which such project or projects are located upon request of such State.

[(f) ADVANCE CONSTRUCTION.—When a State which has been delegated responsibility for a project under this section—

[(1) has obligated all funds allocated under this section and section 1602 of the Transportation Equity Act for the 21st Century or section 1701 of the SAFETEA-LU, as the case may be, for such project; and

[(2) proceeds to construct such project without the aid of Federal funds in accordance with all procedures and all requirements applicable to such project, except insofar as such procedures and requirements limit the State to the construction of projects with the aid of Federal funds previously allocated to it;

the Secretary, upon the approval of the application of a State, shall pay to the State the Federal share of the cost of construction of the project when additional funds are allocated for such project under this section and such section 1602 or 1702, as the case may be.

[(g) PERIOD OF AVAILABILITY.—Funds made available to carry out this section shall remain available until expended.

[(h) AVAILABILITY OF OBLIGATION LIMITATION.—Obligation authority attributable to funds made available to carry out this section shall only be available for the purposes of this section and shall remain available until obligated pursuant to section 1102(g) of the Transportation Equity Act for the 21st Century or section 1102(g) of the SAFETEA-LU, as the case may be.

[(i) TREATMENT.—Funds allocated to a State in accordance with this section shall be treated as amounts in addition to the amounts a State is apportioned under sections 104, 105, and 144 for programmatic purposes.]

#### § 118. Availability of funds

(a) DATE AVAILABLE FOR OBLIGATION.—Except as otherwise specifically provided, authorizations from the Highway Trust Fund (other than the [Mass Transit Account] *Alternative Transportation Account*) to carry out this title, and amounts made available from the *Alternative Transportation Account* to carry out the congestion mitigation and air quality improvement program under section 149, the ferry boat and ferry terminal facilities program under section 147, the Puerto Rico highway program under section 165, and the territorial highway program under section 215, shall be available for obligation on the date of their apportionment or allocation or on



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October 1 of the fiscal year for which they are authorized, whichever occurs first.

- \* \* \* \* \*
- [(c) SET ASIDES FOR INTERSTATE DISCRETIONARY PROJECTS.—**
- [(1) IN GENERAL.—**Before any apportionment is made under section 104(b)(4), the Secretary shall set aside \$100,000,000 for each of fiscal years 2005 through 2009 for obligation by the Secretary for projects for resurfacing, restoring, rehabilitating, and reconstructing any route or portion thereof on the Interstate System (other than any highway designated as a part of the Interstate System under section 139 (as in effect on the day before the date of enactment of the Transportation Equity Act for the 21st Century)) and any toll road on the Interstate System not subject to an agreement under section 119(e) (as in effect on December 17, 1991).
- [(2) SELECTION CRITERIA.—**The amounts set aside under paragraph (1) shall be made available by the Secretary to any State applying for such funds if the Secretary determines that—
- [(A)** the State has obligated or demonstrates that it will obligate in the fiscal year all of its apportionments under section 104(b)(4) other than an amount that, by itself, is insufficient to pay the Federal share of the cost of a project for resurfacing, restoring, rehabilitating, and reconstructing the Interstate System that has been submitted by the State to the Secretary for approval; and
- [(B)** the applicant is willing and able to—
- [(i)** obligate the funds within 1 year of the date the funds are made available;
- [(ii)** apply the funds to a ready-to-commence project; and
- [(iii)** in the case of construction work, begin work within 90 days after obligation.
- [(3) PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.—**In selecting projects to fund under paragraph (1), the Secretary shall give priority consideration to any project the cost of which exceeds \$10,000,000 on any high volume route in an urban area or a high truck-volume route in a rural area.
- [(4) PERIOD OF AVAILABILITY OF DISCRETIONARY FUNDS.—**Sums made available pursuant to this subsection shall remain available until expended.]

\* \* \* \* \*

**[§ 119. Interstate maintenance program**

- [(a) IN GENERAL.—**
- [(1) PROJECTS.—**The Secretary may approve projects for resurfacing, restoring, rehabilitating, and reconstructing—
- [(A)** routes on the Interstate System designated under section 103(c)(1) and, in Alaska and Puerto Rico, under section 103(c)(4)(A);
- [(B)** routes on the Interstate System designated before the date of enactment of the Transportation Equity Act for the 21st Century under subsections (a) and (b) of section

139 (as in effect on the day before the date of enactment of such Act); and

[(C) any segments that become part of the Interstate System under section 1105(e)(5) of the Intermodal Surface Transportation Efficiency Act of 1991.

[(2) TOLL ROADS.—The Secretary may approve a project pursuant to this subsection on a toll road only if such road is subject to a Secretarial agreement provided for in section 129 or continued in effect by section 1012(d) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 1939) and not voided by the Secretary under section 120(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 159).

[(3) FUNDING.—Sums authorized to be appropriated to carry out this section shall be out of the Highway Trust Fund and shall be apportioned in accordance with section 104(b)(4).

[(b) TRANSFER OF INTERSTATE CONSTRUCTION APPORTIONMENTS.—Upon application by a State (other than the State of Massachusetts) and approval by the Secretary, the Secretary may transfer to the apportionments to such State under section 104(b)(1) or 104(b)(4) any amount of the funds apportioned to such State for any fiscal year under section 104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century) if such amount does not exceed the Federal share of the costs of construction of segments of the Interstate System open to traffic in such State (other than high occupancy vehicle lanes) included in the most recent interstate cost estimate. Upon transfer of such amount, the construction on which such amount is based on open-to-traffic segments of the Interstate System in such State as included in the latest interstate cost estimate shall be ineligible and shall not be included in future interstate cost estimates approved or adjusted under section 104(b)(5)(A) (as in effect on the date before the date of enactment of the Transportation Equity Act for the 21st Century).

[(c) TRANSFER OF FUNDS FOR SURFACE TRANSPORTATION PROGRAM PROJECTS.—

[(1) UPON CERTIFICATION ACCEPTANCE.—If a State certifies to the Secretary that any part of the sums apportioned to the State under section 104(b)(4) of this title are in excess of the needs of the State for resurfacing, restoring, or rehabilitating Interstate System routes and the State is adequately maintaining the Interstate System and the Secretary accepts such certification, the State may transfer such excess part to its apportionment under sections 104(b)(1) and 104(b)(3).

[(2) UNCONDITIONAL.—Notwithstanding paragraph (1), a State may transfer to its apportionment under sections 104(b)(1) and 104(b)(3) of this title—

[(A) in fiscal year 1987, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(4) which are not obligated at the time of the transfer; and

[(B) in any fiscal year thereafter, an amount not to exceed 20 percent of the funds apportioned to the State under section 104(b)(4) for such fiscal year.

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[(d) **LIMITATION ON NEW CAPACITY.**—Notwithstanding any other provision of this title, the portion of the cost of any project undertaken pursuant to this section that is attributable to the expansion of the capacity of any Interstate highway or bridge, where such new capacity consists of one or more new travel lanes that are not high-occupancy vehicle lanes or auxiliary lanes, shall not be eligible for funding under this section.]

**§ 119. National Highway System program**

(a) **ESTABLISHMENT.**—The Secretary shall establish and implement a National Highway System program under this section.

(b) **PURPOSES.**—The purposes of the National Highway System program shall be—

(1) to provide support for the condition and operational performance of the National Highway System;

(2) to provide support for the construction of new facilities on the National Highway System; and

(3) to ensure that investments of National Highway System program funds are directed to achievement of performance goals established in a State's asset management plan for the National Highway System under section 103(b)(6).

(c) **ELIGIBLE FACILITIES.**—Except as otherwise specifically provided by this section, to be eligible for funding apportioned under section 104(b)(1) to carry out this section, a facility must be located on the National Highway System.

(d) **ELIGIBLE PROJECTS.**—Funds apportioned to a State to carry out this section may be obligated only for a project that is—

(1) on an eligible facility, as described in subsection (c);

(2) a project, or is a part of a program of projects, supporting progress toward the achievement of national performance goals under section 5206 of title 49 for improving infrastructure condition, safety, mobility, or freight movement on the National Highway System;

(3) consistent with the requirements of sections 5203 and 5204 of title 49; and

(4) for one or more of the purposes specified in subsection (e).

(e) **PROJECT PURPOSES.**—A project receiving funding under this section shall be for one or more of the following purposes:

(1) Construction, reconstruction, resurfacing, restoration, rehabilitation, preservation, or operational improvements of segments of the National Highway System.

(2) Construction, reconstruction, replacement (including replacement with fill material), rehabilitation, preservation, and protection (including scour countermeasures, seismic retrofits, and impact protection measures) of bridges and tunnels on the National Highway System.

(3) Inspection and evaluation, as defined in section 151, of bridges and tunnels on the National Highway System, or inspection and evaluation of other highway infrastructure assets on the National Highway System.

(4) Training of bridge and tunnel inspectors, as defined in section 151.

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(5) Rehabilitation or replacement of existing ferry boats and ferry boat facilities, including approaches, that connect road segments of the National Highway System.

(6) Highway safety improvements for segments of the National Highway System.

(7) Capital and operating costs for traffic management and traveler information monitoring, management, and control facilities and programs for the National Highway System.

(8) Infrastructure-based intelligent transportation systems capital improvements for the National Highway System.

(9) Development and implementation of a State asset management plan for the National Highway System in accordance with section 103(b), including data collection, maintenance, and integration and the cost associated with obtaining, updating, and licensing software and equipment required for risk-based asset management and performance-based management.

(10) Environmental mitigation efforts related to projects funded under this section, as described in subsection (f).

(11) Construction of publicly owned intracity or intercity bus terminals.

(12) Environmental restoration and pollution abatement associated with a project funded under this section in accordance with section 328.

**(f) ENVIRONMENTAL MITIGATION.—**

(1) **ELIGIBLE ACTIVITIES.**—Environmental mitigation efforts referred to in subsection (e)(10) include—

(A) participation in mitigation banking or other third-party mitigation arrangements, such as—

(i) the purchase of credits from commercial mitigation banks;

(ii) the establishment and management of agency-sponsored mitigation banks; and

(iii) the purchase of credits or establishment of in-lieu fee mitigation programs;

(B) contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats, wetlands, and other resources; and

(C) the development of statewide and regional environmental protection plans.

(2) **INCLUSION OF OTHER ACTIVITIES.**—The banks, efforts, and plans described in paragraph (1) include any such banks, efforts, and plans developed in accordance with applicable law (including regulations).

(3) **TERMS AND CONDITIONS.**—The following terms and conditions apply to natural habitat and wetlands mitigation efforts referred to in subsection (e)(10):

(A) Contributions to the mitigation effort may take place concurrent with, in advance of, or subsequent to the construction of a project or projects.

(B) Credits from any agency-sponsored mitigation bank that are attributable to funding under this section may be used only for projects funded under this title unless the agency pays to the Secretary an amount equal to the Federal funds attributable to the mitigation bank credits the

agency uses for purposes other than mitigation of a project funded under this title.

(4) *PREFERENCE.*—At the discretion of the project sponsor, preference shall be given, to the maximum extent practicable, to mitigating an environmental impact through the use of a mitigation bank or other third-party mitigation arrangement, if the use of credits from the mitigation bank for the project is approved by the applicable Federal agency.

(g) *FEDERAL SHARE.*—

(1) *IN GENERAL.*—Except as provided by paragraph (2), the Federal share of the cost of a project payable from funds made available to carry out this section shall be determined under section 120(b).

(2) *INTERSTATE SYSTEM.*—The Federal share of the cost of a project on the Interstate System payable from funds made available to carry out this section shall be determined under section 120(a).

#### § 120. Federal share payable

(a) \* \* \*

\* \* \* \* \*

(e) *EMERGENCY RELIEF.*—The Federal share payable on account of any repair or reconstruction provided for by funds made available under section 125 of this title on account of any project on a Federal-aid highway, including the Interstate System, shall not exceed the Federal share payable on a project on such highway as provided in subsections (a) and (b) of this section; except that (1) the Federal share payable for eligible emergency repairs to minimize damage, protect facilities, or restore essential traffic accomplished within 180 days after the actual occurrence of the natural disaster or catastrophic failure may amount to 100 percent of the costs thereof; and (2) the Federal share payable on account of any repair or reconstruction of [forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads] *tribal roads and Federal lands highways* may amount to 100 percent of the cost thereof. The total cost of a project may not exceed the cost of repair or reconstruction of a comparable facility. As used in this section with respect to bridges and in section 144 of this title, “a comparable facility” shall mean a facility which meets the current geometric and construction standards required for the types and volume of traffic which such facility will carry over its design life.

\* \* \* \* \*

(j) *CREDIT FOR NON-FEDERAL SHARE.*—

(1) *ELIGIBILITY.*—

(A) *IN GENERAL.*—A State may use as a credit toward the non-Federal share requirement for any funds made available to carry out this title (other than the emergency relief program authorized by section 125 [and the Appalachian development highway system program under section 14501 of title 40]) or chapter 53 of title 49 toll revenues that are generated and used by public, quasi-public,

and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce.

\* \* \* \* \*

(1) USE OF [FEDERAL LANDS HIGHWAYS PROGRAM] *TRIBAL TRANSPORTATION PROGRAM AND FEDERAL LANDS TRANSPORTATION PROGRAM FUNDS.*—Notwithstanding any other provision of law, the funds authorized to be appropriated to carry out [the Federal lands highways program under section 204] *the tribal transportation program under section 202 and the Federal lands transportation program under section 203* may be used to pay the non-Federal share of the cost of any project that is funded under this title or chapter 53 of title 49 and that provides access to or within Federal or Indian lands.

\* \* \* \* \*

#### § 125. Emergency relief

(a) \* \* \*

\* \* \* \* \*

[(d) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on Federal-aid highways in accordance with the provisions of this chapter: Provided, That (1) obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (e) of this section, resulting from a single natural disaster or a single catastrophic failure in a State shall not exceed \$100,000,000, and (2) the total obligations for projects under this section in any fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands shall not exceed \$20,000,000. Notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on Federal-aid highways. Except as to highways, roads, and trails mentioned in subsection (e) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State transportation department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) concurrence of the Secretary is not required.

[(e) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways.]

(d) *ELIGIBILITY.*—

(1) *IN GENERAL.*—Subject to the requirements of this subsection, the Secretary may expend funds from the emergency fund authorized by this section for the repair or reconstruction of Federal-aid highways in accordance with the provisions of this chapter.

(2) *MAXIMUM TOTAL PROJECT COSTS.*—

(A) *IN GENERAL.*—The total cost of a project carried out under this section may not exceed the cost of repair or reconstruction of a comparable facility.

(B) *COMPARABLE FACILITY DEFINED.*—In this paragraph, the term “comparable facility” means a facility that meets the current geometric and construction standards required for the types and volume of traffic that the facility will carry over its design life.

(3) *DEBRIS REMOVAL.*—The costs of debris removal shall be an eligible expense under this section only for—

(A) an event not declared a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); or

(B) an event declared a major disaster or emergency by the President under that Act if the debris removal is not eligible for assistance pursuant to section 403, 407, or 502 of that Act (42 U.S.C. 5170b, 5173, 5192).

(4) *TERRITORIES.*—The total obligations for projects under this section in a fiscal year in the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands may not exceed \$20,000,000.

(5) *TEMPORARY SUBSTITUTE HIGHWAY TRAFFIC SERVICE.*—Notwithstanding any other provision of this chapter, actual and necessary costs of maintenance and operation of ferryboats or additional transit service providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund under this section authorized for Federal-aid highways.

(6) *APPLICATIONS; EMERGENCY DECLARATIONS.*—Except as to highways, roads, and trails referred to in subsection (e), no funds may be expended under this section unless—

(A) a declaration is made—

(i) by the Governor of the State and concurred in by the Secretary, that an emergency exists; or

(ii) by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that a major disaster or emergency exists; and

(B) not later than 2 years after a declaration is made under subparagraph (A), the Secretary has received an application for assistance from the State transportation department that includes a comprehensive list of potentially eligible project sites and repair costs.

(e) *TRIBAL ROADS, FEDERAL LANDS HIGHWAYS, AND PUBLIC ROADS ON FEDERAL LANDS.*—

(1) *USE OF EMERGENCY FUND.*—Notwithstanding subsection

(d)(1), the Secretary may expend funds from the emergency fund

authorized by this section, either independently or in cooperation with any other branch of the Government, a State agency, tribal organization, organization, or person, for the repair or reconstruction of tribal roads, Federal lands highways, and other federally owned roads that are open to public travel, whether or not such roads are Federal-aid highways.

(2) **REIMBURSEMENTS.**—The Secretary may reimburse Federal agencies, State (including political subdivisions of the States) agencies, and Indian tribal governments for expenditures made on projects determined eligible under this section, including expenditures for emergency repairs made before a determination of eligibility. Such reimbursements to Federal agencies and Indian tribal governments shall be transferred to the account from which the expenditure was made, or to a similar account that remains available for obligation, and the budget authority associated with the expenditure shall be restored to the agency from which it was derived and shall be available for obligation until the end of the fiscal year following the year in which the transfer occurs.

(3) **OPEN TO PUBLIC TRAVEL DEFINED.**—In this subsection, the term “open to public travel” means that, except during scheduled periods, extreme weather conditions, or emergencies, the road is open to the general public for use with a standard passenger auto, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

\* \* \* \* \*

#### **[§ 126. Uniform transferability of Federal-aid highway funds**

**[(a) GENERAL RULE.**—Notwithstanding any other provision of law but subject to subsections (b) and (c), if at least 50 percent of a State's apportionment under section 104 or 144 for a fiscal year or at least 50 percent of the funds set-aside under section 133(d) from the State's apportionment under section 104(b)(3) may not be transferred to any other apportionment of the State under section 104 or 144 for such fiscal year, then the State may transfer not to exceed 50 percent of such apportionment or set aside to any other apportionment of such State under section 104 or 144 for such fiscal year.

**[(b) APPLICATION TO CERTAIN SET-ASIDES.**—No funds may be transferred under this section that are subject to the last sentence of section 133(d)(1) or to section 104(f) or to section 133(d)(3). The maximum amount that a State may transfer under this section of the State's set-aside under section 133(d)(1) or 133(d)(2) for a fiscal year may not exceed 25 percent of (1) the amount of such set-aside, less (2) the amount of the State's set-aside under such section for fiscal year 1997.

**[(c) APPLICATION TO CERTAIN CMAQ FUNDS.**—The maximum amount that a State may transfer under this section of the State's apportionment under section 104(b)(2) for a fiscal year may not exceed 50 percent of (1) the amount of such apportionment, less (2) the amount that the State's apportionment under section 104(b)(2) for such fiscal year would have been had the program been funded



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at \$1,350,000,000. Any such funds apportioned under section 104(b)(2) and transferred under this section may only be obligated in geographic areas eligible for the obligation of funds apportioned under section 104(b)(2).】

**§ 126. Uniform transferability of Federal-aid highway funds**

(a) *GENERAL RULE.*—Notwithstanding any other provision of law, but subject to subsection (b), a State may transfer not to exceed 25 percent of the State's apportionment under paragraph (1), (3), or (5) of section 104(b) for a fiscal year to any other apportionment of the State under any of those paragraphs for that fiscal year.

(b) *APPLICATION TO CERTAIN SET-ASIDES.*—No funds may be transferred under this section that are subject to section 104(f) or section 133(d)(3).

**§ 127. Vehicle weight limitations—Interstate System**

(a) *IN GENERAL.*—

(1) \* \* \*

\* \* \* \* \*

(12) *HEAVY DUTY VEHICLES.*—

(A) \* \* \*

(B) *MAXIMUM WEIGHT INCREASE.*—The weight increase under subparagraph (A) shall be not greater than [400] 550 pounds.

(C) *PROOF.*—On request by a regulatory agency or law enforcement agency, the vehicle operator shall provide proof (through demonstration or certification) that—

(i) \* \* \*

(ii) the [400-pound] 550-pound gross weight increase is not used for any purpose other than the use of idle reduction technology described in subparagraph (A).

(13) *PILOT PROGRAM.*—

(A) *IN GENERAL.*—The Secretary may carry out a pilot program under which the Secretary may authorize up to 3 States to allow, by special permit, the operation of vehicles with a gross vehicle weight of up to 126,000 pounds on segments on the Interstate System in the State.

(B) *REQUIREMENTS.*—A State authorized under the pilot program under subparagraph (A) shall—

(i) identify and submit to the Secretary for approval the segments on the Interstate System to be subject to the program and the configurations of vehicles to be allowed to operate under a special permit;

(ii) allow vehicles subject to the program to operate on not more than 3 segments, which may be contiguous, of up to 25 miles each;

(iii) require the loads of vehicles operating under a special permit to conform to such single axle, tandem axle, tridem axle, and bridge formula limits applicable in the State; and

(iv) establish and collect a fee for vehicles operating under a special permit.

(C) *PROHIBITIONS.*—The Secretary may prohibit the operation of a vehicle under a special permit if the Secretary determines that the operation poses an unreasonable safety risk based on an analysis of engineering data, safety data, or other applicable data.

(D) *DURATION.*—The Secretary may authorize a State under the pilot program under subparagraph (A) for a period not to exceed 4 years.

\* \* \* \* \*

(i) *SPECIAL PERMITS DURING PERIODS OF EMERGENCY.*—

(1) *IN GENERAL.*—A State may issue special permits with respect to a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) to overweight vehicles and loads that can be easily dismantled or divided allowing operations on the Interstate System that would otherwise be prohibited under subsection (a), if—

(A) the permits are issued in accordance with State law; and

(B) the permits are issued exclusively to vehicles and loads that are delivering relief supplies in response to the major disaster or emergency.

(2) *EXPIRATION.*—A permit issued with respect to a major disaster or emergency under paragraph (1) shall expire not later than 120 days after the date of the declaration of the major disaster or emergency as described in paragraph (1).

(j) *EMERGENCY VEHICLES.*—

(1) *IN GENERAL.*—Notwithstanding subsection (a), a State may not enforce against an emergency vehicle a weight limit of—

(A) less than 24,000 pounds on a single steering axle;

(B) less than 33,500 pounds on a single drive axle;

(C) less than 62,000 pounds on a tandem axle; or

(D) less than 52,000 pounds on a tandem rear drive steer axle, up to a maximum gross vehicle weight of 86,000 pounds.

(2) *EMERGENCY VEHICLE DEFINED.*—In this subsection, the term “emergency vehicle” means a vehicle designed to be used under emergency conditions—

(A) to transport personnel and equipment; and

(B) to support the suppression of fires or mitigation of other hazardous situations.

\* \* \* \* \*

**§ 129. Toll roads, bridges, tunnels, and ferries**

**[(a) BASIC PROGRAM.—**

**[(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—**Notwithstanding section 301 of this title and subject to the provisions of this section, the Secretary shall permit Federal participation in—

**[(A) initial construction of a toll highway, bridge, or tunnel (other than a highway, bridge, or tunnel on the Interstate System) or approach thereto;**

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[(B) reconstructing, resurfacing, restoring, and rehabilitating a toll highway, bridge, or tunnel (including a toll highway, bridge, or tunnel subject to an agreement entered into under this section or section 119(e) as in effect on the day before the date of the enactment of the Intermodal Surface Transportation Efficiency Act of 1991) or approach thereto;

[(C) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;

[(D) reconstruction of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility; and

[(E) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under subparagraph (A), (B), (C), or (D);

on the same basis and in the same manner as in the construction of free highways under this chapter.

[(2) OWNERSHIP.—Each highway, bridge, tunnel, or approach thereto constructed under this subsection must—

[(A) be publicly owned, or

[(B) be privately owned if the public authority having jurisdiction over the highway, bridge, tunnel, or approach has entered into a contract with a private person or persons to design, finance, construct, and operate the facility and the public authority will be responsible for complying with all applicable requirements of this title with respect to the facility.

[(3) LIMITATIONS ON USE OF REVENUES.—Before the Secretary may permit Federal participation under this subsection in construction of a highway, bridge, or tunnel located in a State, the public authority (including the State transportation department) having jurisdiction over the highway, bridge, or tunnel must enter into an agreement with the Secretary which provides that all toll revenues received from operation of the toll facility will be used first for debt service, for reasonable return on investment of any private person financing the project, and for the costs necessary for the proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation. If the State certifies annually that the tolled facility is being adequately maintained, the State may use any toll revenues in excess of amounts required under the preceding sentence for any purpose for which Federal funds may be obligated by a State under this title.

[(4) SPECIAL RULE FOR FUNDING.—In the case of a toll highway, bridge, or tunnel under the jurisdiction of a public authority of a State (other than the State transportation department), upon request of the State transportation department and subject to such terms and conditions as such department and public authority may agree, the Secretary shall reimburse such public authority for the Federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as such department would be reimbursed if such project

was being carried out by such department. The reimbursement of funds under this paragraph shall be from sums apportioned to the State under this chapter and available for obligations on projects on the Federal-aid system in such State on which the project is being carried out.

[(5) LIMITATION ON FEDERAL SHARE.—The Federal share payable for a project described in paragraph (1) shall be a percentage determined by the State but not to exceed 80 percent.

[(6) MODIFICATIONS.—If a public authority (including a State transportation department) having jurisdiction over a toll highway, bridge, or tunnel subject to an agreement under this section or section 119(e), as in effect on the day before the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991, requests modification of such agreement, the Secretary shall modify such agreement to allow the continuation of tolls in accordance with paragraph (3) without repayment of Federal funds.

[(7) LOANS.—

[(A) IN GENERAL.—A State may loan to a public or private entity constructing or proposing to construct under this section a toll facility or non-toll facility with a dedicated revenue source an amount equal to all or part of the Federal share of the cost of the project if the project has a revenue source specifically dedicated to it. Dedicated revenue sources for non-toll facilities include excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, and such other dedicated revenue sources as the Secretary determines appropriate.

[(B) COMPLIANCE WITH FEDERAL LAWS.—As a condition of receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the project will be carried out in accordance with this title and any other applicable Federal law, including any applicable provision of a Federal environmental law.

[(C) SUBORDINATION OF DEBT.—The amount of any loan received for a project under this paragraph may be subordinated to any other debt financing for the project.

[(D) OBLIGATION OF FUNDS LOANED.—Funds loaned under this paragraph may only be obligated for projects under this paragraph.

[(E) REPAYMENT.—The repayment of a loan made under this paragraph shall commence not later than 5 years after date on which the facility that is the subject of the loan is open to traffic.

[(F) TERM OF LOAN.—The term of a loan made under this paragraph shall not exceed 30 years from the date on which the loan funds are obligated.

[(G) INTEREST.—A loan made under this paragraph shall bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible.

[(H) REUSE OF FUNDS.—Amounts repaid to a State from a loan made under this paragraph may be obligated—

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[(i) for any purpose for which the loan funds were available under this title; and

[(ii) for the purchase of insurance or for use as a capital reserve for other forms of credit enhancement for project debt in order to improve credit market access or to lower interest rates for projects eligible for assistance under this title.

[(I) GUIDELINES.—The Secretary shall establish procedures and guidelines for making loans under this paragraph.

[(8) INITIAL CONSTRUCTION DEFINED.—For purposes of this subsection, the term “initial construction” means the construction of a highway, bridge, or tunnel at any time before it is open to traffic and does not include any improvement to a highway, bridge, or tunnel after it is open to traffic.]

(a) BASIC PROGRAM.—

(1) AUTHORIZATION FOR FEDERAL PARTICIPATION.—*Subject to the provisions of this section, Federal participation shall be permitted on the same basis and in the same manner as construction of toll-free highways is permitted under this chapter in the—*

(A) initial construction of a toll highway, bridge, or tunnel or approach thereto;

(B) initial construction of one or more lanes or other improvements that increase capacity of a highway, bridge, or tunnel (other than a highway on the Interstate System) and conversion of that highway, bridge, or tunnel to a tolled facility;

(C) initial construction of one or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction;

(D) reconstruction, resurfacing, restoration, rehabilitation, or replacement of a toll highway, bridge, or tunnel or approach thereto;

(E) reconstruction or replacement of a toll-free bridge or tunnel and conversion of the bridge or tunnel to a toll facility;

(F) reconstruction, restoration, or rehabilitation of a toll-free Federal-aid highway (other than a highway on the Interstate System) and conversion of the highway to a toll facility;

(G) reconstruction, restoration, or rehabilitation of a highway on the Interstate System if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after reconstruction, restoration, or rehabilitation is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before reconstruction, restoration or rehabilitation;

(H) conversion of a high occupancy vehicle lane on a highway, bridge, or tunnel to a toll facility; and

(I) preliminary studies to determine the feasibility of a toll facility for which Federal participation is authorized under this paragraph.

(2) OWNERSHIP.—Each highway, bridge, tunnel, or approach thereto constructed under this subsection must—

(A) be publicly owned; or

(B) be privately owned if the public authority with jurisdiction over the highway, bridge, tunnel, or approach has entered into a contract with a private person or persons to design, finance, construct, and operate the facility and the public authority will be responsible for complying with all applicable requirements of this title with respect to the facility.

(3) LIMITATIONS ON USE OF REVENUES.—

(A) IN GENERAL.—A public authority with jurisdiction over a toll facility shall use all toll revenues received from operation of the toll facility only for—

(i) debt service with respect to the projects on or for which the tolls are authorized, including funding of reasonable reserves and debt service on refinancing;

(ii) reasonable return on investment of any private person financing the project, as determined by the State or interstate compact of States concerned;

(iii) any costs necessary for the improvement and proper operation and maintenance of the toll facility, including reconstruction, resurfacing, restoration, and rehabilitation;

(iv) if the toll facility is subject to a public-private partnership agreement, payments that the party holding the right to toll revenues owes to the other party under the public-private partnership agreement; and

(v) if the public authority certifies annually that the tolled facility is being adequately maintained, the public authority may use toll revenues for any other purpose for which Federal funds may be obligated by a State under this title.

(B) ANNUAL AUDIT.—A public authority with jurisdiction over a toll facility shall conduct or have an independent auditor conduct an annual audit of toll facility records to verify adequate maintenance and compliance with subparagraph (A), and report the results of such audits to the Secretary. Upon reasonable notice, the public authority shall make all records of the public authority pertaining to the toll facility available for audit by the Secretary.

(C) NONCOMPLIANCE.—If the Secretary concludes that a public authority has not complied with the limitations on the use of revenues described in subparagraph (A), the Secretary may require the public authority to discontinue collecting tolls until an agreement with the Secretary is reached to achieve compliance with the limitation on the use of revenues described in subparagraph (A).

(4) LIMITATIONS ON CONVERSION OF HIGH OCCUPANCY VEHICLE FACILITIES ON INTERSTATE SYSTEM.—

(A) *IN GENERAL.*—A public authority with jurisdiction over a high occupancy vehicle facility on the Interstate System may undertake reconstruction, restoration, or rehabilitation under subsection (a)(1)(G) on the facility, and may levy tolls on vehicles, excluding high occupancy vehicles, using the reconstructed, restored, or rehabilitated facility, if the public authority—

(i) in the case of a high occupancy vehicle facility that affects a metropolitan area, submits to the Secretary a written assurance that the metropolitan planning organization designated under section 5203 of title 49 for the area has been consulted concerning the placement and amount of tolls on the converted facility;

(ii) develops, manages, and maintains a system that will automatically collect the toll; and

(iii) establishes policies and procedures to—

(I) manage the demand to use the facility by varying the toll amount that is charged; and

(II) enforce sanctions for violations of use of the facility.

(B) *EXEMPTION FROM TOLLS.*—In levying tolls on a facility under subparagraph (A), a public authority may designate classes of vehicles that are exempt from the tolls or charge different toll rates for different classes of vehicles.

(5) *SPECIAL RULE FOR FUNDING.*—In the case of a toll facility under the jurisdiction of a public authority of a State (other than the State transportation department), upon request of the State transportation department and subject to such terms and conditions as such department and public authority may agree, the Secretary, working through the State department of transportation, shall reimburse such public authority for the Federal share of the costs of construction of the project carried out on the toll facility under this subsection in the same manner and to the same extent as such department would be reimbursed if such project was being carried out by such department. The reimbursement of funds under this paragraph shall be from sums apportioned to the State under this chapter and available for obligations on projects on the Federal-aid system in such State on which the project is being carried out.

(6) *LIMITATION ON FEDERAL SHARE.*—The Federal share payable for a project described in paragraph (1) shall be a percentage determined by the State but not to exceed 80 percent.

(7) *MODIFICATIONS.*—If a public authority (including a State transportation department) with jurisdiction over a toll facility subject to an agreement under this section or section 119(e), as in effect on the day before the effective date of title I of the Intermodal Surface Transportation Efficiency Act of 1991, requests modification of such agreement, the Secretary shall modify such agreement to allow the continuation of tolls in accordance with paragraph (3) without repayment of Federal funds.

(8) *LOANS.*—

(A) *IN GENERAL.*—Using amounts made available under this title, a State may loan to a public or private en-

tity constructing or proposing to construct under this section a toll facility or non-toll facility with a dedicated revenue source an amount equal to all or part of the Federal share of the cost of the project if the project has a revenue source specifically dedicated to it. Dedicated revenue sources for non-toll facilities include excise taxes, sales taxes, motor vehicle use fees, tax on real property, tax increment financing, and such other dedicated revenue sources as the Secretary determines appropriate.

(B) **COMPLIANCE WITH FEDERAL LAWS.**—As a condition of receiving a loan under this paragraph, the public or private entity that receives the loan shall ensure that the project will be carried out in accordance with this title and any other applicable Federal law, including any applicable provision of a Federal environmental law.

(C) **SUBORDINATION OF DEBT.**—The amount of any loan received for a project under this paragraph may be subordinated to any other debt financing for the project.

(D) **OBLIGATION OF FUNDS LOANED.**—Funds loaned under this paragraph may only be obligated for projects under this paragraph.

(E) **REPAYMENT.**—The repayment of a loan made under this paragraph shall commence not later than 5 years after date on which the facility that is the subject of the loan is open to traffic.

(F) **TERM OF LOAN.**—The term of a loan made under this paragraph shall not exceed 30 years from the date on which the loan funds are obligated.

(G) **INTEREST.**—A loan made under this paragraph shall bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible.

(H) **REUSE OF FUNDS.**—Amounts repaid to a State from a loan made under this paragraph may be obligated—

(i) for any purpose for which the loan funds were available under this title; and

(ii) for the purchase of insurance or for use as a capital reserve for other forms of credit enhancement for project debt in order to improve credit market access or to lower interest rates for projects eligible for assistance under this title.

(I) **GUIDELINES.**—The Secretary shall establish procedures and guidelines for making loans under this paragraph.

(9) **STATE LAW PERMITTING TOLLING.**—If a State does not have a highway, bridge, or tunnel toll facility as of the date of enactment of the American Energy and Infrastructure Jobs Act of 2012, before commencing any activity authorized under this section, the State must have in effect a law that permits tolling on a highway, bridge, or tunnel.

(10) **DEFINITIONS.**—In this subsection, the following definitions apply:



(A) *HIGH OCCUPANCY VEHICLE; HOV.*—The term “high occupancy vehicle” or “HOV” means a vehicle with no fewer than 2 occupants.

(B) *INITIAL CONSTRUCTION.*—The term “initial construction” means the construction of a highway, bridge, tunnel, or other facility at any time before it is open to traffic and does not include any improvement to a highway, bridge, tunnel, or other facility after it is open to traffic.

(C) *PUBLIC AUTHORITY.*—The term “public authority” means a State, interstate compact of States, or public entity designated by a State.

(D) *TOLL FACILITY.*—The term “toll facility” means a toll highway, bridge, or tunnel or approach thereto constructed under this subsection.

\* \* \* \* \*

### § 130. Railway-highway crossings

(a) \* \* \*

\* \* \* \* \*

(d) *SURVEY AND SCHEDULE OF PROJECTS.*—Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railway-highway crossings. Each State shall make the surveys conducted and schedules implemented under this subsection available to the public on an appropriate Internet Web site of the State.

\* \* \* \* \*

(m) *RAILWAY-HIGHWAY CROSSING INFORMATION.*—

(1) *PRIORITY LISTS AND ACTION PLANS.*—

(A) *IN GENERAL.*—Not later than 1 year after the date of enactment of this subsection, each State shall compile and submit to the Secretary a report that includes—

(i) a list of the 10 railway-highway crossings in the State that have the greatest need for safety improvements;

(ii) an action plan that identifies projects and activities the State plans to carry out to improve safety at those railway-highway crossings; and

(iii) a list of projects and activities the State carried out to improve safety at those railway-highway crossings during the 2-year period ending on the date on which the report is submitted to the Secretary.

(B) *UPDATES.*—Each State shall update and submit to the Secretary, at least once every 2 years, the report of that State under subparagraph (A).

(2) *PUBLICATION OF REPORTS ON U.S. DOT WEB SITE.*—The Secretary shall make the reports submitted under paragraph (1) available to the public on the Internet Web site of the Department of Transportation.

(3) *PUBLICATION OF REPORTS ON STATE WEB SITES.*—Each State shall make the reports compiled under paragraph (1) available to the public on an appropriate Internet Web site of the State.

(4) *LIMITATION ON USE OF DATA IN JUDICIAL PROCEEDINGS.*—Notwithstanding any other provision of law, any report, review, survey, schedule, list, data, information, or document of any kind compiled or collected pursuant to this subsection, including for the purpose of identifying, evaluating, or planning the safety enhancement of a potential accident site or railway-highway crossing pursuant to this section, shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such report, review, survey, schedule, list, data, information, or document.

(5) *NONCOMPLIANCE.*—If the Secretary determines that a State is not in compliance with requirements under this subsection, the Secretary may withhold funding that would otherwise be apportioned to that State under this section.

#### § 131. Control of outdoor advertising

(a) \* \* \*

\* \* \* \* \*

(i) In order to provide information in the specific interest of the traveling public, the State transportation departments are authorized to maintain maps and to permit information directories and advertising pamphlets to be made available at safety rest areas. Subject to the approval of the Secretary, a State may also establish information centers at safety rest areas and other travel information systems within the rights-of-way for the purpose of informing the public of places of interest within the State and providing such other information as a State may consider desirable. The Federal share of the cost of establishing such an information center or travel information system shall be that which is provided in section 120 for a highway project on that Federal-aid system to be served by such center or system. A State may permit the installation of signs that acknowledge the sponsorship of rest areas within such rest areas or along the main traveled way of the system, provided that such signs shall not affect the safe and efficient utilization of the Interstate System and the primary system. The Secretary shall establish criteria for the installation of such signs on the main traveled way, including criteria pertaining to the placement of rest area sponsorship acknowledgment signs in relation to the placement of advance guide signs for rest areas.

\* \* \* \* \*

#### § 133. Surface transportation program

(a) \* \* \*

(b) *ELIGIBLE PROJECTS.*—A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following:

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[(1) Construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways (including Interstate highways) and bridges (including bridges on public roads of all functional classifications), including any such construction or reconstruction necessary to accommodate other transportation modes, and including the seismic retrofit and painting of and application of calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions on bridges and approaches thereto and other elevated structures, mitigation of damage to wildlife, habitat, and ecosystems caused by a transportation project funded under this title.]

(1) *Construction, reconstruction, rehabilitation, resurfacing, restoration, preservation, and operational improvements for highways, including construction of designated routes of the Appalachian Development Highway System.*

(2) *Replacement (including replacement with fill material), rehabilitation, preservation, and protection (including painting, scour countermeasures, seismic retrofits, impact protection measures, security countermeasures, and protection against extreme events) for bridges and tunnels on public roads of all functional classifications.*

(3) *Construction of a new bridge or tunnel at a new location on a Federal-aid highway.*

(4) *Inspection and evaluation of bridges and tunnels and training of bridge and tunnel inspectors (as defined in section 151), and inspection and evaluation of other highway assets (including signs, retaining walls, and drainage structures).*

[(2)] (5) Capital costs for transit projects eligible for assistance under chapter 53 of title 49, including vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus.

[(3)] (6) Carpool projects, fringe and corridor parking facilities and programs, bicycle transportation and pedestrian walkways in accordance with section 217, and the modification of public sidewalks to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

[(4)] (7) Highway and transit safety infrastructure improvements and programs, hazard eliminations, projects to mitigate hazards caused by wildlife, and railway-highway grade crossings.

[(5)] (8) Highway and transit research and development and technology transfer programs.

[(6)] (9) Capital and operating costs for traffic monitoring, management, and control facilities and programs, including advanced truck stop electrification systems.

[(7)] (10) Surface transportation planning programs.

[(8)] (11) Transportation enhancement activities.

[(9)] (12) Transportation control measures listed in section 108(f)(1)(A) (other than clause (xvi)) of the Clean Air Act (42 U.S.C. 7408(f)(1)(A)).

[(10)] (13) Development and establishment of management systems under section 303.

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[(11) In accordance with all applicable Federal law and regulations, participation in natural habitat and wetlands mitigation efforts related to projects funded under this title, which may include participation in natural habitat and wetlands mitigation banks; contributions to statewide and regional efforts to conserve, restore, enhance, and create natural habitats and wetlands; and development of statewide and regional natural habitat and wetlands conservation and mitigation plans, including any such banks, efforts, and plans authorized pursuant to the Water Resources Development Act of 1990 (including crediting provisions). Contributions to such mitigation efforts may take place concurrent with or in advance of project construction. Contributions toward these efforts may occur in advance of project construction only if such efforts are consistent with all applicable requirements of Federal law and regulations and State transportation planning processes. With respect to participation in a natural habitat or wetland mitigation effort related to a project funded under this title that has an impact that occurs within the service area of a mitigation bank, preference shall be given, to the maximum extent practicable, to the use of the mitigation bank if the bank contains sufficient available credits to offset the impact and the bank is approved in accordance with the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 Fed. Reg. 58605 (November 28, 1995)) or other applicable Federal law (including regulations).]

(14) *Environmental mitigation efforts relating to projects funded under this title in the same manner and to the same extent as such activities are eligible under section 119(f).*

[(12)] (15) Projects relating to intersections that—

(A) \* \* \*

\* \* \* \* \*

[(13)] (16) Infrastructure-based intelligent transportation systems capital improvements.

[(14)] (17) Environmental restoration and pollution abatement in accordance with section 328.

[(15) Control of noxious weeds and aquatic noxious weeds and establishment of native species in accordance with section 329.]

[(c) LOCATION OF PROJECTS.—Except as provided in subsection (b)(1), surface transportation program projects (other than those described in subsections (b)(3) and (4)) may not be undertaken on roads functionally classified as local or rural minor collectors, unless such roads are on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.]

(c) *LOCATION OF PROJECTS.—Except for projects described in subsections (b)(2), (b)(6), and (b)(7), surface transportation program projects may not be undertaken on roads functionally classified as local or rural minor collectors unless the roads were on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary.*

(d) ALLOCATIONS OF APPORTIONED FUNDS.—

(1) \* \* \*

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[(2) FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—In a fiscal year, the greater of 10 percent of the funds apportioned to a State under section 104(b)(3) for such fiscal year, or the amount set aside under this paragraph with respect to the State for fiscal year 2005, shall only be available for transportation enhancement activities.]

(3) DIVISION BETWEEN URBANIZED AREAS OF OVER 200,000 POPULATION AND OTHER AREAS.—

(A) GENERAL RULE.—Except as provided in subparagraph (C), [62.5 percent of the remaining 90 percent] 50 percent of the funds apportioned to a State under section 104(b)(3) for a fiscal year shall be obligated under this section—

(i) \* \* \*

\* \* \* \* \*  
in proportion to their relative share of the State's population. The remaining [37.5 percent] 50 percent may be obligated in any area of the State. Funds attributed to an urbanized area under clause (i) may be obligated in the metropolitan area established under section 134 which encompasses the urbanized area.

\* \* \* \* \*  
(E) CONSULTATION WITH RURAL PLANNING ORGANIZATIONS.—For purposes of subparagraph (A)(ii), before obligating funding attributed to an area with a population greater than 5,000 and less than 200,000, a State shall consult with the rural planning organizations that represent the area, if any.

\* \* \* \* \*  
(5) APPLICABILITY OF CERTAIN REQUIREMENTS TO THIRD PARTY SELLERS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), in the case of a transportation enhancement activity [funded from the allocation required under paragraph (2)], if real property or an interest in real property is to be acquired from a qualified organization exclusively for conservation purposes (as determined under section 170(h) of the Internal Revenue Code of 1986), the organization shall be considered to be the owner of the property for the purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

\* \* \* \* \*  
(e) ADMINISTRATION.—  
(1) \* \* \*

\* \* \* \* \*  
(3) PAYMENTS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall make payments to a State of costs incurred by the State for the surface transpor-

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tation program in accordance with procedures to be established by the Secretary.

**[(B) ADVANCE PAYMENT OPTION FOR TRANSPORTATION ENHANCEMENT ACTIVITIES.—**

**[(i) IN GENERAL.—**The Secretary may advance funds to the State for transportation enhancement activities funded from the allocation required by subsection (d)(2) for a fiscal year.

**[(ii) LIMITATION ON AMOUNTS.—**Amounts advanced under this subparagraph shall be limited to such amounts as are necessary to make prompt payments for project costs.

**[(iii) EFFECT ON OTHER REQUIREMENTS.—**This subparagraph shall not exempt a State from other requirements of this title relating to the surface transportation program.]

**(3) PAYMENTS.—***The Secretary shall make payments to a State of costs incurred by the State for the surface transportation program in accordance with procedures to be established by the Secretary.*

\* \* \* \* \*

**(f) OBLIGATION AUTHORITY.—**

**(1) IN GENERAL.—**A State that is required to obligate in an urbanized area with an urbanized area population of over 200,000 individuals under subsection (d) funds apportioned to the State under section 104(b)(3) shall make available during the period of fiscal years [2004 through 2006] *2011 through 2013* and the period of fiscal years [2007 through 2009] *2014 through 2016* an amount of obligation authority distributed to the State for Federal-aid highways and highway safety construction programs for use in the area that is equal to the amount obtained by multiplying—

**(A) \* \* \***

\* \* \* \* \*

**[§ 134. Metropolitan transportation planning**

**[(a) POLICY.—**It is in the national interest to—

**[(1)** encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

**[(2)** encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 135(d).

**[(b) DEFINITIONS.—**In this section and section 135, the following definitions apply:

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[(1) METROPOLITAN PLANNING AREA.—The term “metropolitan planning area” means the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

[(2) METROPOLITAN PLANNING ORGANIZATION.—The term “metropolitan planning organization” means the policy board of an organization created as a result of the designation process in subsection (d).

[(3) NONMETROPOLITAN AREA.—The term “nonmetropolitan area” means a geographic area outside designated metropolitan planning areas.

[(4) NONMETROPOLITAN LOCAL OFFICIAL.—The term “nonmetropolitan local official” means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

[(5) TIP.—The term “TIP” means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

[(6) URBANIZED AREA.—The term “urbanized area” means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

[(c) GENERAL REQUIREMENTS.—

[(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPS.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.

[(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

[(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

[(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

[(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

[(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

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[(B) in accordance with procedures established by applicable State or local law.

[(2) STRUCTURE.—Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

[(A) local elected officials;

[(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

[(C) appropriate State officials.

[(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to—

[(A) develop the plans and TIPs for adoption by a metropolitan planning organization; and

[(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

[(4) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

[(5) REDESIGNATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section.

[(6) DESIGNATION OF MORE THAN 1 METROPOLITAN PLANNING ORGANIZATION.—More than 1 metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than 1 metropolitan planning organization for the area appropriate.

[(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

[(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

[(2) INCLUDED AREA.—Each metropolitan planning area—

[(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

[(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.



[(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

[(4) EXISTING METROPOLITAN PLANNING AREAS IN NON-ATTAINMENT.—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the SAFETEA-LU, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

[(5) NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.—In the case of an urbanized area designated after the date of enactment of the SAFETEA-LU, as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

[(A) shall be established in the manner described in subsection (d)(1);

[(B) shall encompass the areas described in paragraph (2)(A);

[(C) may encompass the areas described in paragraph (2)(B); and

[(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

[(f) COORDINATION IN MULTISTATE AREAS.—

[(1) IN GENERAL.—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

[(2) INTERSTATE COMPACTS.—The consent of Congress is granted to any two or more States—

[(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

[(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

[(3) LAKE TAHOE REGION.—

[(A) DEFINITION.—In this paragraph, the term “Lake Tahoe region” has the meaning given the term “region” in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96-551 (94 Stat. 3234).

[(B) TRANSPORTATION PLANNING PROCESS.—The Secretary shall—

[(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake

Tahoe region a transportation planning process for the region; and

[(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 135.

[(C) INTERSTATE COMPACT.—

[(i) IN GENERAL.—Subject to clause (ii), and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

[(ii) INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.—

[(I) REPRESENTATION.—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

[(II) FUNDING.—For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this title and chapter 53 of title 49, prior to any allocation under section 202 of this title and notwithstanding the allocation provisions of section 202, the Secretary shall set aside  $\frac{1}{2}$  of 1 percent of all funds authorized to be appropriated for such fiscal year to carry out section 204 and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96-551 (94 Stat. 3233) and this paragraph.

[(D) ACTIVITIES.—Highway projects included in transportation plans developed under this paragraph—

[(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region; and

[(ii) may, in accordance with chapter 2, be funded using funds allocated under section 202.

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[(4) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

[(g) MPO CONSULTATION IN PLAN AND TIP COORDINATION.—

[(1) NONATTAINMENT AREAS.—If more than 1 metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

[(2) TRANSPORTATION IMPROVEMENTS LOCATED IN MULTIPLE MPOS.—If a transportation improvement, funded from the Highway Trust Fund or authorized under chapter 53 of title 49, is located within the boundaries of more than 1 metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

[(3) RELATIONSHIP WITH OTHER PLANNING OFFICIALS.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

[(A) recipients of assistance under chapter 53 of title 49;

[(B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

[(C) recipients of assistance under section 204.

[(h) SCOPE OF PLANNING PROCESS.—

[(1) IN GENERAL.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

[(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

[(B) increase the safety of the transportation system for motorized and nonmotorized users;

[(C) increase the security of the transportation system for motorized and nonmotorized users;

[(D) increase the accessibility and mobility of people and for freight;

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[(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

[(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

[(G) promote efficient system management and operation; and

[(H) emphasize the preservation of the existing transportation system.

[(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

[(i) DEVELOPMENT OF TRANSPORTATION PLAN.—

[(1) IN GENERAL.—Each metropolitan planning organization shall prepare and update a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

[(A) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

[(B) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 175A of that Act (42 U.S.C. 7505a).

In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

[(2) TRANSPORTATION PLAN.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

[(A) IDENTIFICATION OF TRANSPORTATION FACILITIES.—

An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions. In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

[(B) MITIGATION ACTIVITIES.—

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[(i) IN GENERAL.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

[(ii) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

[(C) FINANCIAL PLAN.—A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

[(D) OPERATIONAL AND MANAGEMENT STRATEGIES.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

[(E) CAPITAL INVESTMENT AND OTHER STRATEGIES.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

[(F) TRANSPORTATION AND TRANSIT ENHANCEMENT ACTIVITIES.—Proposed transportation and transit enhancement activities.

[(3) COORDINATION WITH CLEAN AIR ACT AGENCIES.—In metropolitan areas which are in nonattainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

[(4) CONSULTATION.—

[(A) IN GENERAL.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

[(B) ISSUES.—The consultation shall involve, as appropriate—

[(i) comparison of transportation plans with State conservation plans or maps, if available; or

[(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

[(5) PARTICIPATION BY INTERESTED PARTIES.—

[(A) IN GENERAL.—Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

[(B) CONTENTS OF PARTICIPATION PLAN.—A participation plan—

[(i) shall be developed in consultation with all interested parties; and

[(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

[(C) METHODS.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

[(i) hold any public meetings at convenient and accessible locations and times;

[(ii) employ visualization techniques to describe plans; and

[(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

[(6) PUBLICATION.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

[(7) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

[(j) METROPOLITAN TIP.—

[(1) DEVELOPMENT.—

[(A) IN GENERAL.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

[(B) OPPORTUNITY FOR COMMENT.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

[(C) FUNDING ESTIMATES.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably expected to be available to support program implementation.

[(D) UPDATING AND APPROVAL.—The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

[(2) CONTENTS.—

[(A) PRIORITY LIST.—The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.

[(B) FINANCIAL PLAN.—The TIP shall include a financial plan that—

[(i) demonstrates how the TIP can be implemented;

[(ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;

[(iii) identifies innovative financing techniques to finance projects, programs, and strategies; and

[(iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.

[(C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.

[(3) INCLUDED PROJECTS.—

[(A) PROJECTS UNDER THIS TITLE AND CHAPTER 53 OF TITLE 49.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under chapter 1 of this title and chapter 53 of title 49.

[(B) PROJECTS UNDER CHAPTER 2.—

[(i) REGIONALLY SIGNIFICANT PROJECTS.—Regionally significant projects proposed for funding under chapter 2 shall be identified individually in the transportation improvement program.

[(ii) OTHER PROJECTS.—Projects proposed for funding under chapter 2 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.

[(C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-

range transportation plan developed under subsection (i) for the area.

**[(D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—** The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.

**[(4) NOTICE AND COMMENT.—** Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).

**[(5) SELECTION OF PROJECTS.—**

**[(A) IN GENERAL.—** Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved TIP—

**[(i) by—**

**[(I) in the case of projects under this title, the State; and**

**[(II) in the case of projects under chapter 53 of title 49, the designated recipients of public transportation funding; and**

**[(ii) in cooperation with the metropolitan planning organization.**

**[(B) MODIFICATIONS TO PROJECT PRIORITY.—** Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.

**[(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—**

**[(A) NO REQUIRED SELECTION.—** Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).

**[(B) REQUIRED ACTION BY THE SECRETARY.—** Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.

**[(7) PUBLICATION.—**

**[(A) PUBLICATION OF TIPS.—** A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.

**[(B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—** An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding



year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.

**[(k) TRANSPORTATION MANAGEMENT AREAS.—**

**[(1) IDENTIFICATION AND DESIGNATION.—**

**[(A) REQUIRED IDENTIFICATION.—**The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

**[(B) DESIGNATIONS ON REQUEST.—**The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

**[(2) TRANSPORTATION PLANS.—**In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

**[(3) CONGESTION MANAGEMENT PROCESS.—**Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this title and chapter 53 of title 49 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than 1 year after the identification of a transportation management area.

**[(4) SELECTION OF PROJECTS.—**

**[(A) IN GENERAL.—**All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under this title (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under chapter 53 of title 49 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

**[(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—**Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System and projects carried out within such boundaries under the bridge program or the Interstate maintenance program under this title shall be selected for implementation from the approved TIP by the State in cooperation with the metropolitan planning organization designated for the area.

**[(5) CERTIFICATION.—**

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[(A) IN GENERAL.—The Secretary shall—

[(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

[(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

[(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

[(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

[(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

[(C) EFFECT OF FAILURE TO CERTIFY.—

[(i) WITHHOLDING OF PROJECT FUNDS.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this title and chapter 53 of title 49.

[(ii) RESTORATION OF WITHHELD FUNDS.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

[(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

[(I) ABBREVIATED PLANS FOR CERTAIN AREAS.—

[(1) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

[(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

[(m) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

[(1) IN GENERAL.—Notwithstanding any other provisions of this title or chapter 53 of title 49, for transportation management areas classified as nonattainment for ozone or carbon

monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

[(2) APPLICABILITY.—This subsection applies to a non-attainment area within the metropolitan planning area boundaries determined under subsection (e).

[(n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to confer on a metropolitan planning organization the authority to impose legal requirements on any transportation facility, provider, or project not eligible under this title or chapter 53 of title 49.

[(o) FUNDING.—Funds set aside under section 104(f) of this title or section 5305(g) of title 49 shall be available to carry out this section.

[(p) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since plans and TIPs described in this section are subject to a reasonable opportunity for public comment, since individual projects included in plans and TIPs are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning plans and TIPs described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a plan or TIP described in this section shall not be considered to be a Federal action subject to review under such Act.

### **§ 135. Statewide transportation planning**

[(a) GENERAL REQUIREMENTS.—

[(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives stated in section 134(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State, subject to section 134.

[(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

[(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 134(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

[(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

[(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 134 for metropolitan areas of the State and with state-

wide trade and economic development planning activities and related multistate planning efforts; and

[(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

[(c) INTERSTATE AGREEMENTS.—

[(1) IN GENERAL.—The consent of Congress is granted to two or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

[(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

[(d) SCOPE OF PLANNING PROCESS.—

[(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

[(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

[(B) increase the safety of the transportation system for motorized and nonmotorized users;

[(C) increase the security of the transportation system for motorized and nonmotorized users;

[(D) increase the accessibility and mobility of people and freight;

[(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

[(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

[(G) promote efficient system management and operation; and

[(H) emphasize the preservation of the existing transportation system.

[(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this title or chapter 53 of title 49, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

[(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider, at a minimum—

[(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

[(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

[(3) coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

[(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

[(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

[(2) CONSULTATION WITH GOVERNMENTS.—

[(A) METROPOLITAN AREAS.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 134.

[(B) NONMETROPOLITAN AREAS.—With respect to non-metropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The Secretary shall not review or approve the consultation process in each State.

[(C) INDIAN TRIBAL AREAS.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.

[(D) CONSULTATION, COMPARISON, AND CONSIDERATION.—

[(i) IN GENERAL.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.

[(ii) COMPARISON AND CONSIDERATION.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

[(3) PARTICIPATION BY INTERESTED PARTIES.—

[(A) IN GENERAL.—In developing the statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and

other interested parties with a reasonable opportunity to comment on the proposed plan.

[(B) METHODS.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—

[(i) hold any public meetings at convenient and accessible locations and times;

[(ii) employ visualization techniques to describe plans; and

[(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

[(4) MITIGATION ACTIVITIES.—

[(A) IN GENERAL.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.

[(B) CONSULTATION.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

[(5) FINANCIAL PLAN.—The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

[(6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

[(7) EXISTING SYSTEM.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

[(8) PUBLICATION OF LONG-RANGE TRANSPORTATION PLANS.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

[(g) STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM.—

[(1) DEVELOPMENT.—Each State shall develop a statewide transportation improvement program for all areas of the State. Such program shall cover a period of 4 years and be updated every 4 years or more frequently if the Governor elects to update more frequently.